

TITLE III – FEDERAL TRANSIT ADMINISTRATION PROGRAMS

SEC. 3001. SHORT TITLE.

House Bill

Sec. 3001.

Subsection (a) provides that this title to be cited as the Federal Public Transportation Act of 2005. Subsection (b) provides that amendments in this title, unless otherwise specified, are made to title 49 of the United States Code.

Senate Bill

Sec. 6001.

The title to be cited as the Federal Public Transportation Act of 2005.

Conference Substitute

Adopts Senate proposal.

SEC. 3002. AMENDMENTS TO TITLE 49, UNITED STATES CODE; UPDATED TERMINOLOGY.

House Bill

Sec. 3001

Subsection (b) amends chapter 53 of title 49, United States Code by striking “mass transportation” and replacing it with “public transportation”, reflecting the broader applicability of transit services beyond urban areas.

Senate Bill

Sec. 6002.

Subsection (a) provides that amendments in this title, unless otherwise specified, are made to title 49 of the United States Code. Subsection (b) amends chapter 53 of title 49, United States Code by striking “mass transportation” and replacing it with “public transportation.”

Conference Substitute

Adopts Senate proposal.

SEC. 3003. POLICIES, FINDINGS, AND PURPOSES.

House Bill

Sec. 3002.

This section and subsequent sections of the bill change the terminology used to describe the federal transit programs, which have grown far beyond the original mission and orientation of “urban renewal” in the Federal Transit Administration’s organic statute, the Urban Mass Transportation Act of 1964. Today, the federal transit programs also provide vital transportation services to rural and other non-urban constituencies. The title change and subsequent legislative changes to chapter 53, title 49 United States Code in which the terms “mass transit” or “mass transportation” are replaced by “public transportation” reflect this evolution.

Senate Bill

Sec. 6003.

Section 5301(a) states that it is in the economic interest of the United States to encourage and promote the development of transportation systems because they maximize mobility and minimize transportation-related fuel consumption and air pollution. The findings in section 5301(b) are updated to reflect Census 2000 data. Subsection 5301(e) is amended to apply current requirements to preserve the environment and important historical and cultural assets throughout chapter 53, rather than only to capital programs carried out under sections 5309 and 5310. Terms throughout the section are updated for clarity.

Conference Substitute.

Adopts the House language in subsection 5301(a) with the inclusion of economic interest. The Census updates from the Senate language are adopted. The remaining provisions of the section are the same in both bills.

SEC. 3004. DEFINITIONS.

House Bill

Sec. 3003.

This section includes amendments to definitions that apply generally to chapter 53 of title 49, United States Code. These changes include adding new eligibilities for federal capital transit funding. Newly eligible uses for these capital funds include: (1) acquiring, constructing, relocating, and renovating intercity bus stations and terminals; (2) crime prevention and security projects (including security training for personnel and conducting

emergency response drills); (3) establishing a debt service reserve fund for bond payments when such bonds are used for the purpose of financing an eligible transit project; and (4) mobility management activities and projects. Mobility management activities and projects improve the coordination among public transportation and other transportation service providers through short-range planning and management activities, such as buying computer software that matches public transportation riders and non-emergency medical and other human services clients to transportation services. Directly providing public transportation services is not an eligible capital expense under this definition. The definition of “urbanized area” is revised to reflect the Department of Commerce’s role in designating urbanized areas via the decennial Census. Under current law, the terms “mass transportation,” “public transportation,” and “transit” are interchangeable. Under the changes made in this section, these three terms are still synonymous. However, “public transportation” becomes the principal defined term.

Senate Bill

Sec. 6004.

This section includes amendments to definitions that apply generally to chapter 53 of title 49, United States Code. These changes include adding new eligibilities for federal capital transit funding. Newly eligible uses for these capital funds include: (1) acquiring, constructing, relocating, and renovating intercity bus stations and terminals; (2) crime prevention and security projects (including security training for personnel and conducting emergency response drills); and (3) establishing a debt service reserve fund for bond payments when such bonds are used for the purpose of financing an eligible transit project. The Senate Banking Committee believes that improved integrated, interoperable, emergency communications infrastructure is one way for transit operators to improve the response to emergency situations, and that such expenditures are eligible capital expenditures under chapter 53. The Senate bill includes mobility management activities under the section 5307 urbanized area formula grant program. As defined in this section, mobility management activities and projects tailor public transportation services to specific markets and manage demand for public transportation to help enhance ridership in a cost-effective and efficient manner. The definition of public transportation is amended to codify current practice of providing transportation service that serves a specific urbanized or rural area and its environs. Except for specific exceptions, such as the expanded eligibility of intercity bus facilities for capital funding and the ongoing intercity bus service under section 5311(f), intercity bus or rail services are not public transportation. The definition of “urbanized area” is revised to reflect the Department of Commerce’s role in designating urbanized areas via the decennial Census. Under current law, the terms “mass transportation,” “public transportation,” and “transit” are interchangeable. Under the changes made in this section, these three terms are still synonymous. However, “public transportation” becomes the principal defined term.

Conference Substitute

Adopts the House language regarding new eligibilities for federal capital transit funding, including the more limited definition of mobility management activities and projects as being directly related to improved coordination among public transportation and other transportation service providers. These new capital eligibilities apply to all programs under chapter 53. The conferees believe that improved integrated, interoperable, emergency communications infrastructure are one way for transit operators to improve the response to emergency situations, and that such expenditures are eligible capital expenditures under this chapter. The definition of public transportation has been amended to mean transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or intercity bus transportation (except under programs where intercity bus projects are made specifically eligible), or intercity passenger rail transportation provided by Amtrak or its successor entities. The definition of “urbanized area” is revised to reflect the Department of Commerce’s role in designating urbanized areas via the decennial Census. “Public transportation,” “mass transportation,” and “transit” remain interchangeable and synonymous. However, “public transportation” becomes the principal defined term, in recognition that the federal public transportation program has evolved over time, and now covers rural and other non-urban constituencies, as well as urbanized areas.

SEC. 3005. METROPOLITAN TRANSPORTATION PLANNING.

House Bill

Sec. 3004.

The House bill consolidates current law metropolitan planning provisions under sections 5303 and 5304 of title 49, U.S.C. and under section 134 of title 23, U.S.C. into a unified planning title for both transit and highways under chapter 52 of title 49, U.S.C.. For ease of reference, subsection 5303(a) of title 49, U.S.C. is amended to reflect that grants made under sections 5307-5311, 5316 and 5317 are to be carried out in accordance with chapter 52. Subsection 5303(b) requires the Secretary to certify that metropolitan planning organizations (MPOs) in transportation management areas comply with all planning and other applicable requirements in law in their transportation planning activities. However, the Secretary may not withhold certification of a transportation plan based on private enterprise participation. This is a standing limitation in existing law under section 5305(e)(3).

Senate Bill

Sec. 6005.

The Senate bill consolidates all provisions for metropolitan planning under section 5303 of title 49. The bill maintains the requirement for separate transportation plans and transportation improvement programs and requires certification of the planning process every four years. The Senate repeals the current law provision that allows a plan to be certified by the Secretary regardless of the policies and criteria an MPO or transit

recipient establishes for deciding the feasibility of private enterprise participation. However, language is added under section 5306(a) of title 49 to clarify that local criteria will be the basis for such decisionmaking. The current law provisions regarding the scope of the planning process are amended to provide more detail on how protection of the environment is to be considered and adds a reference to planned growth patterns. A new participation plan is established to afford parties who participate in the metropolitan planning process a specific opportunity to comment on the plan before its approval. MPOs must certify that they have complied with their participation plan before the transportation plan can be approved. A new provision is added that requires the secretary to issue rules regarding the publication of the projects in the transportation improvement program for which funds have actually been obligated. Section 5305 of title 49, U.S.C. is repealed because provisions regarding Transportation Management Areas are incorporated into metropolitan transportation planning.

Conference Substitute

Adopts the Senate proposal, without the requirement that MPOs must certify that they have complied with their participation plan before the transportation plan can be approved.

SEC. 3006. STATEWIDE TRANSPORTATION PLANNING.

House Bill

Sec. 3005.

The House bill consolidates the metropolitan and statewide planning provisions currently under title 23, U.S.C. and chapter 53, title 49, U.S.C. into a unified planning title for both transit and highways under chapter 52 of title 49, U.S.C. For ease of reference, section 5304 of title 49, U.S.C. is amended to reflect that grants made under sections 5307-5311, 5316 and 5317 are to be carried out in accordance with chapter 52. Under current law (section 5323(l)), statewide transit planning was subject to statewide highway planning processes outlined in section 135 of title 23, U.S.C.

Senate Bill

Sec. 6006.

The Senate bill includes statewide planning requirements explicitly under 49 U.S.C. 5304, rather than by reference to section 135 of title 23 U.S.C. A new subsection (c) is added to allow States to enter into compacts or agreements for the purpose of formal planning cooperation and coordination for projects with multi-State implications. A requirement is added for States to consider the economic vitality for rural areas as well as urbanized areas in statewide transportation planning. The joint consideration of safety and security factors in planning is broken out as separate factors, to highlight heightened concerns with security at all levels of Government. The current law provisions regarding

the scope of the planning process are amended to provide more detail on how protection of the environment is to be considered. An expanded publication of the statewide plan is required. The update cycles for development and approval of statewide transportation plans are set at 4 years.

Conference Substitute

Adopts the Senate proposal.

SEC. 3007. PLANNING PROGRAMS.

House Bill

Sec. 3006.

Metropolitan planning and statewide planning funding provisions contained in current law sections 5303(g) and 5313(b) are moved into a unified section on planning programs as the amended section 5305 of 49 U.S.C. The current law section 5305 pertains to metropolitan planning requirements for transportation management areas. These provisions are included under the unified metropolitan planning sections of chapter 52.

Subsections 5305(a), (b) and (c) establish the general planning grant authority and purposes. The current law definition of a State is retained (a State of the United States, the District of Columbia, and Puerto Rico). Subsection (d) describes the metropolitan planning grant apportionment process. Subsection (e) describes the state planning and research grant apportionment process. Subsection (f) sets the Government's share of planning grant activity costs at 80 percent. Subsection (g) describes the allocation of planning funds made available under funding authorization section 5338(c) between metropolitan planning and statewide planning, using the same percentages set in current law section 5338(c)(2)(C) (82.72 percent for metropolitan planning and 17.28 percent for state planning and research). In subsection (h), funds remain available for three years after the fiscal year in which the funds are authorized, the same period of availability as under current law.

Senate Bill

Sec. 6010.

The Senate bill merges the existing Clean Fuels Formula Program into the Bus and Bus Facilities Program and sets the consolidated metropolitan and statewide planning grant programs under 49 U.S.C. 5308. The current law limitation on the definition of State is deleted, providing transportation planning funds and responsibilities for the first time to the U.S. Territories. A new planning capacity building program of \$5 million a year is established for metropolitan planning organizations and transportation operators to

plan, develop and implement innovations and enhancements that support and strengthen the planning process. This program is also authorized and funded under the highway title and will be carried out jointly by FTA and FHWA. The bill provides \$20 million a year for alternatives analysis activities that are now funded from the 49 U.S.C. 5309 New Starts program. The Senate believes that it is inappropriate to fund alternatives analysis under New Starts because that presumes that the result of the locally preferred alternative will, in fact, be a New Start. After these two new set-asides, the remaining planning funds are distributed as by current law, with 82.72 percent for metropolitan planning and 17.28 percent for state planning and research. The Government's share for planning grant activities is set at 80 percent, and funds remain available for three years after the fiscal year in which the funds are authorized, the same period of availability as under current law.

Conference Substitute

Adopts the House language restricting planning funds and responsibilities to U.S. States, the District of Columbia, and Puerto Rico. Adopts House language defining the prompt allocation of planning funds by States to metropolitan planning organizations to be made available within 30 days after allocation to the State. Does not include an alternatives analysis set-aside under the Planning Programs, although a new stand-alone alternatives analysis program is established under section 5339 of title 49, United States Code. Planning funds will continue to be distributed as under current law, with 82.72 percent for metropolitan planning and 17.28 percent for state planning.

SEC. 3008. PRIVATE ENTERPRISE PARTICIPATION.

House Bill

Sec. 3007.

This section title has been shortened to more clearly reflect the provisions within. The text of section 5306 of title 49, United States Code is not amended.

Senate Bill

Sec. 6008.

Current language that prohibits decertification for failure to meet the private sector participation requirements in 49 U.S.C. 5306 is not reenacted. The Senate bill adds clarifying language to make clear that local criteria are to be the basis for deciding on how to involve the private sector. A rulemaking is required to implement all of the changes to the statute made throughout the Senate bill on private sector participation, including enhancements to the role of private transportation providers in the planning process, changes in funding eligibility, and funding allocations.

Conference Substitute

Adopts the Senate proposal clarifying that local criteria are to be the basis for deciding how to involve the private sector.

SEC. 3009. URBANIZED AREA FORMULA GRANTS.

House Bill

Sec. 3008.

This section amends section 5307 of title 49, United States Code, which contains provisions governing the eligibility and procedures for urbanized area formula grants to transit providers in areas of 50,000 and more in population. Two existing law subsections are deleted. Subsection 5307(h) is deleted as a technical cleanup, because streamlined administrative procedures for track and signal equipment certification have already been promulgated as directed in the subsection. Subsection 5307(k) regarding transit enhancement activities is also deleted, but the requirement that one percent of urbanized area formula grant funds for recipients in areas of over 200,000 be invested on enhancement activities is retained, and added to the list of grant recipient requirements in subsection 5307(d)(1).

In paragraph (2), the existing extension of operating flexibility in urbanized areas that were less than 200,000 under the 1990 Census, but increased to more than 200,000 in the 2000 Census, is further extended through the end of fiscal year 2004.

Currently under subsection 5307(d), recipients are required to certify that they have the legal, financial, and technical capacity to carry out the program of projects for which they are applying as an urbanized area formula grant. This is amended in subparagraph (d)(1)(A) to additionally require that recipients certify such legal, financial, and technical capacity for the safety and security aspects of their program of projects.

Subsection 5307(e) regarding the Government's share of costs is amended by deleting the 1985 baseline limitation on local match revenues resulting from the sale of advertising or concessions. Additionally, recipients are authorized to use amounts received under service agreements with a State, local social service agency, or private social service organizations as local match. This creates an incentive to transit agencies to better coordinate transportation services with human service agencies that provide transportation services.

Section 5307(i) is redesignated as section 5307(h) and amended to give the Secretary discretion to require annual audits rather than mandate them.

Subsection 5307(l) as redesignated, Relationship to Other Laws, strikes subparagraph (1) and moves the provision contained therein to the General Provisions on Assistance under section 5323, to make the prohibition on making false or fraudulent

statements to the Government (18 U.S.C. section 1001) applicable to any Federal public transportation grant program. A new paragraph (2) is added that exempts non-supervisory transit employees from the Hatch Act limitations relating to public election procedures for government employees, if the Hatch Act applies only because the employees' salaries are funded through Federal grants under this section. This exemption will apply only to employees in urbanized areas under 200,000 in population, where up to 50 percent of the net project cost may be derived from Federal grant funds. This codifies existing Federal transit law.

Subsection 3008(h) adds a new subsection 5307(m) regarding the treatment of the United States Virgin Islands, which shall be treated as an urbanized area for the purposes of apportionments under section 5307.

Senate Bill

Sec. 6009.

Private companies engaged in public transportation are eligible subrecipients of Federal grants. Subsection 5307(a) is revised to include definitions for 'subrecipient,' as well as 'designated recipient.' A subrecipient includes any entity receiving funding from the designated recipient. This will facilitate private sector participation in public transportation.

Mobility management is made an eligible expense. Subsection (b) is amended to state more explicitly the general authority for grants under Section 5307. Eligibility is expanded to include 'mobility management' as defined in Subsection 5302(a)(7a). Paragraph (4) is struck since separate eligibility for reconstructing or rehabilitating rolling stock is no longer needed, since these terms have been included in the definition of capital project in Subsection 5303(a).

Currently, urbanized areas over 200,000 may not use funds from the urbanized area formula program for operating assistance. A number of urbanized areas' status changed unexpectedly as a result of the 2000 census, due to changes in the Census Bureau's definitions and procedures for defining urbanized areas. These areas were allowed to continue to use funds for operating assistance for 2003 by P.L. 107-232, for 2004 by the Surface Transportation Extension Act of 2003, and for the first eight months of 2005 by the Surface Transportation Extension Act of 2004, Part V. These provisions are extended for the remainder of 2005 as currently enacted. For 2006 and 2007, these provisions are phased out. Urbanized areas covered by these provisions would be allowed to use 50 percent of their current limits on operating assistance in 2006 and 25 percent in 2007. This should provide these areas with more than ample time to develop and implement transition plans. The Senate strongly opposes continuing these provisions beyond 2007 and believes the more appropriate role for the Federal Government is in capital investment.

Section 5307(g)(4) is deleted to remove an obsolete standard for setting interest rates on advance construction projects. TEA-21 included a provision which required that the interest rate be set based on the most favorable terms available to the recipient and thus this is unnecessary.

The eligibility requirements for local match within this section are streamlined to include all advertising revenue as well as contracts with social service organizations.

Certain urbanized areas which grew to a population of over 200,000 can use funds for operating assistance in 2006 through 2007, with the amounts progressively phased down.

Currently, Subsection 5307(h) requires streamlined administrative procedures for track and signal improvements. This subsection is deleted because separate treatment for track and signal projects is no longer needed.

Currently, Subsection 5307(j) requires that grantees submit annual reports on sales of advertising and concessions. This subsection is deleted because it is redundant with a similar requirement of the National Transit Database.

Transit enhancements program is administered as a certification rather than as a set-aside. Subsection 5307(k) dealing with 'transit enhancement activities' is mainstreamed into a new subparagraph (K) in Section 5307(d)(1). Currently, that subsection allows for a one percent set-aside for transit enhancements and requires a report listing the projects. Under new subparagraph (K), a recipient with at least a population of 200,000 in its urbanized area could instead certify that one percent of its Section 5307 funds has been expended on transit enhancements.

Under current law, Section 5307(n)(1) states that 18 U.S.C. 1001, regarding false or fraudulent statements, applies only to certificates or submissions provided pursuant to Section 5307, 'Urbanized Area Formula Grants.' This paragraph is moved to Section 5323, General Provisions on Assistance. Under Section 5223, 18 U.S.C. 1001 applies to any Federal public transportation grant program.

A technical amendment is made to Subsection 5307(k)(2) to provide a complete list of requirements with which grant recipients must comply. In addition, a provision is added to Subsection 5307(k) to clarify that the Hatch Act does not apply to non-supervisory employees of grant recipients. This provision was included in the former Section 5 of the Urban Mass Transportation Act of 1964, as amended. However, it was inadvertently not included in Chapter 53 when the Urban Mass Transportation Act of 1964, as amended, was codified.

Conference Substitute

The conferees adopted the Senate language providing for a phase-out of operating eligibility for urbanized areas which crossed over 200,000 in population for the first time in the 2000 census.

The conference agreement provides that transit enhancement program will be administered as a certification, rather than a set-aside, and that grant recipients must submit an annual report of transit enhancement projects.

The conferees agreed to delete the 1985 baseline limitation on local match revenues resulting from the sale of advertising or concessions. Additionally, the conferees agreed to allow recipients to use amounts received under service agreements with a State, local social service agency, or private social service organizations as local match in order to foster coordination with other agencies that provide transportation services.

The conferees made a number of technical changes to Section 5307. Subsection (b) is amended to state more explicitly the general authority for grants under Section 5307. In addition, the conferees agreed that recipients must certify legal, financial, and technical capacity for the safety and security aspects of their program of projects. The conferees agreed to delete subsections (b)(4), (g)(4), (h), (j), and (k) as redundant or obsolete. The definition of associated capital maintenance was reorganized. A technical amendment is made to Subsection 5307(k)(2) to provide a complete list of requirements with which grant recipients must comply. In addition, a provision is added to Subsection 5307(k) to codify existing transit law which states that the Hatch Act does not apply to non-supervisory employees of grant recipients. The conferees deleted the reference to 18 U.S.C. 1001, regarding false or fraudulent statements, from Section 5307, because Section 5323 is amended to apply 18 U.S.C. 1001 to the entire federal transit program.

The conference agreement adopts the House provision regarding the treatment of the United States Virgin Islands as an urbanized area for the purposes of apportionments under section 5307.

SEC. 3010. CLEAN FUELS GRANT PROGRAM.

House Bill

Sec. 3009.

Section 3009 amends section 5308 of title 49, United States Code, regarding the clean fuels formula grant bus procurement program. Funds are apportioned to recipients in urbanized areas that are designated as nonattainment areas for ozone or carbon monoxide under section 107(d) of the Clean Air Act or are maintenance areas for ozone or carbon monoxide. These grant funds can be used to purchase or lease clean fuel buses, construct or lease vehicle-related equipment supporting such clean fuel buses, and construct new or improve existing facilities to accommodate clean fuel buses. Clean fuel buses include those powered by clean diesel, compressed natural gas, liquefied natural gas, biodiesel fuels, batteries, alcohol-based fuels, hybrid electric power systems, fuel cells, or other low or zero emission technologies. Not more than 25 percent of the funds made available under the clean fuels formula grant program may be used for clean diesel bus technology. The apportionment formula is weighted such that two-thirds of the funds go to recipients serving urbanized areas with a population of 1,000,000 or more and one-third of the funds go to recipients serving urbanized areas of less than 1,000,000. The formula is also weighted by the severity of nonattainment in the urbanized area being served.

The Committee intends that the Secretary shall encourage recipients of clean fuels formula grants to adequately invest in infrastructure facilities to accommodate the needs of these alternatively fueled vehicles.

Senate Bill

No Comparable Provision

Conference Substitute

The conference report retains the House clean fuels grant program, but makes the program discretionary in nature rather than a formula grant program.

SEC. 3011. CAPITAL INVESTMENT GRANTS.

House Bill

Sec. 3010.

This section amends section 5309 of title 49, United States Code, which authorizes capital investment grants for new fixed guideway capital projects (“new starts”), fixed guideway modernization (“rail modernization”), and bus and bus-related facilities. All references in the current law section heading and text to “capital investment loans” are deleted from section 5309. Historically, only capital investment grants have been awarded under this section.

Subsection 5309(c), concerning major capital investment grants of \$75 million or more includes the new starts program requirements and FTA evaluation and rating

criteria found in current law subsection 5309(e). The term describing all new starts and small starts projects is changed from the current law “capital project for a new fixed guideway system or extension of an existing fixed guideway system” to “new fixed guideway capital project” for the sake of brevity. The new term is defined in subsection (n) as a minimum operable segment of a capital project for a new fixed guideway system or extension to an existing fixed guideway system, which is the same definition for new starts projects as under current law subsection 5309(p). Subsection 5309(c) pertains only to those new fixed guideway capital projects that will require \$75 million or more of Federal assistance provided under the authority of Section 5309. Such projects are defined as “major” new starts as opposed to small starts, which involve less than \$75 million in such funds and are authorized under subsection (d).

Major new starts projects must be carried out through a full funding grant agreement with the Secretary. The full funding grant agreement is based upon the evaluations and ratings required under subsection 5309(c). The baseline requirements for a project to secure a grant under this subsection is that the project proposal must be based on the results of alternatives analysis and preliminary engineering; justified based on a comprehensive review of the project’s benefits; and supported by an acceptable degree of local financial commitment. The project justification and local financial commitment evaluation criteria are outlined in detail, consistent with the current law criteria. In assessing the local financial commitment for a new starts project, the FTA is authorized to consider the extent to which the project sponsor has overmatched the statutory local match requirement of 20 percent. However, the authority to consider a higher local match as part of the assessment of a project’s local financial commitment does not allow the Secretary to require a higher local match than 20 percent.

Proposed new starts projects under subsection (c) are authorized to advance from alternatives analysis to preliminary engineering, and from preliminary engineering to final design and construction, if the Secretary finds that the project meets the requirements of this section. In making these findings, the Secretary is directed to evaluate and rate the project as “highly recommended”, “recommended”, or “not recommended” based on the results of alternatives analysis, the project justification criteria, and local financial commitment.

Subsection 5309(d) regarding capital investment grants of less than \$75 million authorizes a new program under Capital Investment Grants. These “small starts” fall into two subcategories – those involving between \$25 million and \$75 million in funds under section 5309, and those that are less than \$25 million. New fixed guideway capital projects with a section 5309 Federal share of less than \$25 million are not subject to the requirements of this subsection regarding project evaluation and rating and do not enter into a long-term financial contract with the Secretary (called a “project construction grant agreement” in the small starts program). Under the small starts program, lower-cost fixed guideway projects such as streetcars, bus rapid transit, and commuter rail projects will be advanced through an expedited and streamlined evaluation and rating process. As the Federal Transit Administration develops administrative and regulatory guidance for

the implementation of the small starts program, the process and procedures adopted should be representative of the relative size and scope of the projects.

Project justifications for the small starts program are based on five criteria: consistency with local land use policies and likelihood to achieve local developmental goals; cost effectiveness of the project at the time revenue service is initiated; degree of positive impact on local economic development; reliability of cost and ridership forecasts; and other factors the Secretary considers appropriate to carry out this subsection. The Secretary is also required to analyze and consider the results of planning and the alternatives analysis for the project. The small starts evaluation process should consider the economic benefits of the project, including the level of private sector investment associated with the advancement of the project. The small starts local financial commitment evaluation is a streamlined version of the new starts financial evaluation process. The Secretary is directed to require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable, and that there be an acceptable degree of local financial commitment. This provision gives the Secretary the authority to consider a higher local match as part of the assessment of a project's local financial commitment, but does not allow the Secretary to require a higher local match than 20 percent.

The project development process is also simplified. The new starts project development process involves four discrete steps: (1) planning and alternatives analysis, (2) preliminary engineering, (3) final design, and (4) entering into a full funding grant agreement and construction. The small starts program involves three steps: (1) planning and alternatives analysis, (2) project development, and (3) entering into a project construction grant agreement and construction. Small starts projects may advance from planning and alternatives analysis to project development and construction only after the Secretary finds that the project meets the requirements of this subsection and the local metropolitan planning organization adopts the locally preferred alternative into its long-range transportation plan. Small starts projects are evaluated based on project justification criteria and local financial commitment and are rated as "recommended" or "not recommended" based on the results of the FTA's analysis. Only small starts projects that are authorized for construction and rated "recommended" may enter into a project construction grant agreement.

Another important difference between the new starts program and the small starts program is that, under the small starts program, fixed guideway capital projects have a broader definition that includes corridor-based public transportation bus projects if the majority of the project's right-of-way is dedicated alignment. However, the program is written to be "mode neutral" – any fixed guideway capital project fitting the broader definition under small starts is eligible to be funded under this category if it is less than \$75 million in section 5309 Federal funds, whether it is a bus rapid transit project, a streetcar or trolley project, commuter rail, or light rail. However, all small starts projects must be included under the new starts authorization list in section 3037 of this bill to receive funds in subsequent appropriations bills within this authorization period.

Subsection 5309(g) outlines the Government's share of the net project cost for all projects authorized under section 5309. The Administration had proposed to decrease the Government's share for new start projects to 50 percent. The Committee has rejected this proposal, and retains the provision under subsection 5309(h) in current law that the Federal share for a project shall be 80 percent, unless the grant recipient requests a lower grant percentage. New language is included clarifying that nothing in section 5309, including the language that specifically directs the FTA to consider in its evaluation of a project the extent to which a project has a higher local match than required by law, shall be construed as authorizing the Secretary to require a local match higher than 20 percent of the net capital project cost.

Subsection 5309(i) directs the Secretary to submit an annual new starts report to the House and Senate authorizing committees on the first Monday in February, which includes the Administration's funding proposals for new starts projects in the coming fiscal year, and evaluations and ratings for all new starts projects authorized in section 3037 of this Act. The current law requirement under subsection 5309(o)(2) regarding an August supplemental report is deleted. The Committee directs that the FTA shall forward letter updates to the House and Senate authorizing committees when a project advances to preliminary engineering or to final design after the publication of the annual new starts report. In subsection 5309(i)(2), the U.S. General Accounting Office is directed to conduct an annual review of FTA's processes and procedures for evaluating, rating, and recommending new starts projects and how the agency implements such processes and procedures. This review shall be submitted to the Congress by May 31 of each year.

Subsection 5309(k), regarding bus and bus facility grants, amends the existing law language under subsection 5309(m)(3). The current language regarding consideration of the age of buses, bus fleets, related equipment, and bus-related facilities when making grants is retained. Current law provisions that set aside funds for the bus testing facility in Altoona, Pennsylvania and for the section 5308 Clean Fuels formula program are deleted, as both these programs are now funded as set-asides from formula grants.

Subsection 5309(l) is a new provision making bus and bus facilities and new starts grant funds available for three fiscal years (including the year in which the amount is made available or appropriated). Funds that remain unobligated after three years shall be deobligated and may be used by the Secretary for any purpose under this section.

Subsection 5309(m) directs the allocation of amounts made available for programs authorized under section 5309. The existing formula of 40 percent for new starts, 40 percent for rail modernization, and 20 percent for bus and bus facilities is retained, after the funding levels authorized for small starts are set aside from the total amount made available for section 5309 programs. The current law set-aside of \$10.4 million a year for ferry boats and ferry terminal facilities in Alaska or Hawaii is retained. A provision is added establishing a new set-aside for the national fuel cell bus technology development program, and a new ferry boat and ferry terminal set-aside of \$10 million per year is established.

Senate Bill

Sec. 6011.

The General Authority section is amended to limit the program to focus on three activities: New Starts, fixed guideway modernization, and buses and bus facilities. Non-fixed guideway corridor improvements are eligible for New Starts funds for projects under \$75 million. Current procedures and criteria apply to New Starts projects over \$75 million in New Starts share while simplified procedures and criteria apply to New Starts projects under \$75 million in New Starts share. The current exemption for projects under \$25 million is eliminated.

The Bus, New Starts and Fixed Guideway Modernization programs continue in the Capital Investment Programs; funds are split approximately 23% bus, 40% New Starts and 37% Fixed Guideway Modernization.

Bus funds going to private non-profit organizations or rural transit systems as subrecipients are administered under the requirements of the Elderly and Disabled and Rural programs, respectively. The requirements for statewide transit providers depend on where the project is located. Funding for Alternatives Analysis is made available from the Planning Program rather than the Capital Investment Program.

The current three level rating system (Highly Recommended, Recommended, Not Recommended) is replaced by a five level system (High, Medium-High, Medium, Medium-Low, Low).

The maximum New Starts share is retained at 80 percent. A higher than requested share can be provided for projects which keep cost and ridership estimates within 10 percent of the forecasts used as the basis for establishing the Locally Preferred Alternative.

Grantees will be allowed to keep a portion of the cost savings in the case where projects are completed under budget.

The New Starts Report and Supplemental Report are replaced by reports issued three times a year focusing on changes to ratings and an annual report on budget recommendations.

References to 'capital investment loans' are deleted from Section 5309 since, historically, only capital investment grants have been awarded pursuant to this section.

A new Subsection 5309(e)(8) is added to require periodic publication of the policies and procedures used in rating projects. This will help improve the transparency and predictability of the rating process.

The Committee is seeking to identify cost drivers for critical, complex, and capital intensive transit New Starts projects. Public Private Partnerships (PPP) may provide an important way to achieve significant savings. These partnerships with qualification-based

selection and performance-based contracting integrate risk sharing, streamline project development, engineering, and construction, and preserve the integrity of the NEPA process, which results in the potential for significant schedule and cost advantages over traditional infrastructure development. The Committee expects the Secretary to initiate the pilot program as soon as practicable after enactment, in order that the benefits of PPP's may be understood and potentially applied to other transit New Starts projects.

A new statutory requirement for 'Before and After Studies' as part of Full Funding Grant Agreements is added in Section 5309(g). Such studies are already required by the regulation implementing Section 5309(e) and are an essential part of improving the New Starts program. By better understanding the actual costs and benefits of New Starts projects, especially the early planning stages when the Locally Preferred Alternative (LPA) is chosen, the planning process can be improved, and future projects can be based on estimates of costs and benefits which are more accurate. In addition, FTA would be required to produce an annual report each year that would summarize the results of these studies.

Section 5309(i)(3) would continue to set aside \$10,400,000 each year for Alaska and Hawaii ferry boats, the same amount as is in TEA-21. The factors in Section 5309(i)(6) to be considered by the Secretary in selecting bus and bus facilities grants is expanded to include both the age and condition of the buses, fleets, and facilities.

In lieu of establishing a new program for intermodal facilities as proposed by the Administration, \$75 million is set aside each year from the bus discretionary program for these facilities. Eligibility for the intercity portion of intermodal terminals is established by the amendment to Section 5302.

The Federal Transit Administration is required to issue a 'Contractor Performance Assessment Report' (CPAR). This report will analyze the consistency and accuracy of cost and ridership estimates made by contractors to public transportation agencies developing major capital investments. This would provide public transportation agencies with a tool to assist in choosing contractors with the highest success rates in predicting cost and ridership.

Conference Substitute

This section amends section 5309 of title 49, United States Code, which authorizes capital investment grants for new fixed guideway capital projects ("new starts"), fixed guideway modernization ("rail modernization"), and bus and bus-related facilities. All references in the current law section heading and text to "capital investment loans" are deleted from section 5309. Historically, only capital investment grants have been awarded under this section.

Subsection 5309(d) regarding capital investment grants of less than \$75 million authorizes a new program under Capital Investment Grants. Under the small starts program, lower-cost fixed guideway and non-fixed guideway projects such as bus rapid transit, streetcars, and commuter rail projects will be advanced through an expedited and

streamlined evaluation and rating process. Non-fixed guideway corridor improvements are eligible for New Starts funds for projects under \$75 million. This can be demonstrated by a substantial fixed guideway or by a substantial investment in a defined corridor. Project justifications for the small starts program are based on five criteria: consistency with local land use policies and likelihood to achieve local developmental goals; cost effectiveness of the project at the time revenue service is initiated; degree of impact on local economic development; reliability of cost and ridership forecasts; and other factors the Secretary considers appropriate to carry out this subsection. The Secretary is also required to analyze and consider the results of planning and the alternatives analysis for the project to ensure that sufficient effort has been made to perform a true exploration of alternatives analysis. . The small starts local financial commitment evaluation is a streamlined version of the new starts financial evaluation process. The Secretary is directed to require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable, and that there be an acceptable degree of local financial commitment.

Current procedures and criteria apply to New Starts projects over \$75 million in New Starts share while simplified procedures and criteria apply to New Starts projects under \$75 million in New Starts share. The current exemption for projects under \$25 million is eliminated, once the FTA has promulgated regulations required under the small starts program.

The current three level rating system for New Starts (Highly Recommended, Recommended, Not Recommended) is replaced by a five level system (High, Medium-High, Medium, Medium-Low, Low). The maximum New Starts share is retained at 80 percent.

Grantees will be allowed to keep a portion of the cost savings in the case where projects are completed under budget.

A higher than requested share can be provided for projects which keep cost and ridership estimates within 10 percent of the forecasts used as the basis for establishing the Locally Preferred Alternative. Transit projects that make a concerted effort to produce valid and reliable estimates have the potential to be rewarded.

Subsection 5309(g) outlines the Government's share of the net project cost for all projects authorized under section 5309. The Administration had proposed to decrease the Government's share for new start projects to 50 percent. The Conference has rejected this proposal, and retains the provision under subsection 5309(h) in current law that the Federal share for a project shall be 80 percent, unless the grant recipient requests a lower grant percentage. In assessing the local financial commitment for a new starts project, the FTA is authorized to consider the extent to which the project sponsor has overmatched the statutory local match requirement of 20 percent. However, the authority to consider a higher local match as part of the assessment of a project's local financial commitment does not allow the Secretary to require a higher local match than 20 percent.

The Conference is seeking to identify cost drivers for critical, complex, and capital intensive transit New Starts projects. Public Private Partnerships (PPP) may provide an important way to achieve significant savings. These partnerships with qualification-based selection and performance-based contracting integrate risk sharing, streamline project development, engineering, and construction, and preserve the integrity of the NEPA process, which results in the potential for significant schedule and cost advantages over traditional infrastructure development. The Committee expects the Secretary to initiate the pilot program as soon as practicable after enactment, in order that the benefits of PPP's may be understood and potentially applied to other transit New Starts projects.

In lieu of establishing a new program for intermodal facilities as proposed by the Administration, \$35 million is set aside each year from the bus discretionary program for these facilities. Eligibility for the intercity portion of intermodal terminals is established by the amendment to Section 5302.

A new statutory requirement for 'Before and After Studies' as part of Full Funding Grant Agreements is added in Section 5309(g). Such studies are already required by the regulation implementing Section 5309(e) and are an essential part of improving the New Starts program. By better understanding the actual costs and benefits of New Starts projects, especially the early planning stages when the Locally Preferred Alternative (LPA) is chosen, the planning process can be improved, and future projects can be based on estimates of costs and benefits which are more accurate. In addition, FTA would be required to produce an annual report each year that would summarize the results of these studies.

The Federal Transit Administration is required to issue a 'Contractor Performance Assessment Report' (CPAR). This report will analyze the consistency and accuracy of cost and ridership estimates made by contractors to public transportation agencies developing major capital investments. The CPAR will provide public transportation agencies with an informational tool, allowing them to better identify contractors able to perform accurate estimates of cost and ridership figures. Additionally, consulting the CPAR as a condition of Federal assistance will help ensure the reliability of estimates used in awarding FFGAs. In considering the performance of individual contractors, the Secretary may take into consideration extenuating factors outside the control of a contractor that may have had an adverse impact on the accuracy of estimates.

SEC. 3012. FORMULA GRANTS FOR SPECIAL NEEDS OF ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES.

House Bill

Sec. 3011.

This section amends section 5310 of title 49, United States Code, which authorizes formula grants to States for public transportation projects and services that meet the special needs of elderly and disabled individuals. The definition of grant recipient is amended in paragraph 5310(a)(2) by adding a definition for subrecipients, which is consistent with current practice. A 10 percent limitation is included on the amount of a State's grant funds that may be used for recipient or for subrecipient administrative expenses and technical assistance. This codifies current FTA administrative practice.

Subsection 5310(b) describes the apportionment and transfer processes, which follows current law, except that an adjustment is made to the apportionment formula for particularly low density States. In low density States, providing essential public transportation is particularly challenging, especially to special needs populations, because of the distances involved. When providing services over these long distances, operating costs are higher and farebox recovery is lower. This formula adjustment may enable low density States to continue providing essential public transportation services to a sector of the population that is particularly dependent on transit – the elderly and disabled.

Subsection (c) amends current law regarding the Government's share of costs. The current Federal match of 80 percent for capital projects is retained, except in cases where a State has a very high percentage of Federally-owned public lands. In such cases, the "sliding scale" Federal match under section 120(b) of title 23, United States Code, is used. Operating expenses are also made eligible for section 5310 elderly and disabled grant funding, limited to 50 percent of net operating costs. Two new sources of local match funding are authorized: proceeds from a service agreement with a State, local social service agency, or private social service organization; and other Federal funds from non-Department of Transportation agencies that can be expended for transportation (e.g., Temporary Assistance for Needy Families, Medicaid, job training program funds, or Welfare to Work grants). Using these related human service grants funds as a local match for transit projects leverages the Federal investment and increases coordination among Federal agencies that provide transportation services.

Subsection (d) regarding grant requirements changes the general applicability of requirements for the elderly and disabled grant program from current law, which ties the program to section 5309, to the requirements under section 5307, to the extent the Secretary considers appropriate. A new requirement is added that, beginning in fiscal year 2007, the State must certify that projects funded under this section are derived from coordinated public transit-human services transportation plans with public input. The current law requirement that the State certify allocations of funds were made on a fair and equitable basis is retained.

Senate Bill

Sec. 6012

Currently, under Section 5310, the Secretary may provide grants for the special needs of elderly individuals and individuals with disabilities directly (1) to a State or local Government authority; or (2) to the chief executive office of the State for allocation to private non-profit corporations or associations when such service is unavailable or insufficient, or (3) to Governmental authorities approved by the State to coordinate services for these two populations groups, if there are no non-profit corporations readily available to provide the service. Section 5310 is amended to authorize grants through the States, which would then allocate the funds to private non-profit organizations or Governmental authorities under the same conditions required in current law.

Persons with disabilities are particularly in need of service beyond that provided in response to the Americans with Disabilities Act. The program is expanded and renamed to include activities which provide access to persons with disabilities, in addition to that which is necessary to meet the requirements of the Americans with Disabilities Act. Funding for Section 5310 is expanded and explicit eligibility is provided for Governmental authorities providing services in excess of that provided by the Americans with Disabilities Act. This will help fulfill the goals of the President's New Freedom Initiative, without creating a new program. In addition, language is added to clarify that a priority of Section 5310 program funds is the provision of access to medical care.

Section 5310(a)(3) allows a State to use up to 15 percent of the amounts it receives under this section to administer, plan, and provide technical assistance. This additional authority makes this program consistent with the Section 5311 program, so that both state-administered programs essentially have similar structures.

Consistent with existing Section 5310, grants would be made for capital public transportation projects planned, designed, and carried out to meet the special needs of this population and could include the acquisition of public transportation services as a capital expense. The Federal share cannot exceed 80 percent of the net capital costs of the projects, as determined by the Secretary. The remainder of the funds could be provided from a variety of other sources, including undistributed cash surpluses, or from amounts appropriated or made available for transportation from any other Federal department or agency other than the Department of Transportation, except for Federal Lands Highway funds, as well as contract revenue received from human service agencies. This section is also amended to allow for a sliding scale approach to the match requirements for capital expenses for those states that have a large percentage of public lands, and as a result, have a lower tax base from which to draw resources to fund the matching requirement mandated by these programs. It is similar in nature to a provision already in current law in the highway program.

As is current practice, funds under Subsection (b)(1) are apportioned to States based on a formula administered by the Secretary. In administering this formula, the Secretary will consider the number of elderly individuals and individuals with disabilities in a State. Under current law, unobligated Section 5310 funds available during the fourth quarter of each fiscal year may be transferred to Urbanized Area or Other Than

Urbanized Area Formula Grant programs in order to supplement funds apportioned under those sections. Subsection (b)(2) allows recipients of grants under this section to transfer Section 5310 funds to those programs at any time provided that the funds are used for the purposes originally authorized. This would eliminate the artificial fourth quarter requirement since States typically budget for such transfers in the beginning of each fiscal year. In addition, States could make funds available to a subrecipient in a single transaction that included several FTA program-funding sources.

Under Subsection (d), a recipient of a grant is subject to all Section 5307 grant requirements to the extent the Secretary deems appropriate. Recipients would be required to certify that the projects for which funds are requested are drawn from a plan for human service transportation coordination. The effect of this provision and those included in the non-urbanized formula program and the Jobs Access and Reverse Commute Program will be to enhance coordination between these programs and with programs of other Departments, such as Health and Human Services, Labor, and Education. The Committee expects that FTA will give grantees an appropriate opportunity to develop these plans by phasing in this requirement during FY 2006. Finally, recipients are required to certify that allocations made to subrecipients were distributed in a fair and equitable manner.

Subsections (e) through (i) are the same as in current law.

Conference Substitute

The conference agreement maintains the current law program for special needs of elderly individuals and individuals with disabilities and does not incorporate New Freedom activities, as the Senate bill did. Because of strong interest from States in extending the authority to use section 5310 grant funds for operating assistance, a new seven-state pilot program is established for fiscal years 2006 through 2009 to determine whether this expanded authority improves services to elderly individuals and individuals with disabilities.

SEC. 3013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

House Bill

Sec. 3012.

This section amends section 5311 of title 49, United States Code, regarding the apportionment of formula grant funds for non-urbanized areas. Subsection (a) amends the definition provisions under section 5311(a) to define an eligible recipient and sub-recipient of other than urbanized area funds.

Subsection (b) amends the general authority provisions that allow other than urbanized areas to use formula grant funds for capital transportation projects, or operating assistance projects (including the acquisition of transportation services) provided the projects are contained in a state program of public transportation service projects. Under

subsection 5311(b)(3), the rural transportation assistance program (RTAP), a national technical assistance, training and support program for rural public transportation providers, is funded with a 2 percent set-aside of the section 5311 grant funds. From the amounts made available for the RTAP activities, up to 15 percent may be used by the Secretary to carry out projects of a national scope to sustain ongoing national activities. Under current law, the RTAP is funded out of the Research program.

Subsection 5311(c) describes the apportionment process, which follows current law, except that an adjustment is made to the apportionment formula for particularly low density States. In low density States, providing essential public transportation is particularly challenging because of the distances involved. When providing services over these long distances, operating costs are higher and farebox recovery is lower. This formula adjustment may enable low density States to provide essential public transportation services by establishing a level of funding that will support a baseline program.

In subsection (e), an amendment is made to 5311(f) that requires States to consult with affected intercity bus service providers before certifying to the Secretary that intercity bus service needs of the State are being adequately met without making the 15 percent allocation of funds to such services. Such consultation would help ensure the State's awareness of any intercity bus service needs.

Subsection (f) amends section 5311(g) to retain the existing Federal share for any capital project at 80 percent or less of the net project cost, as determined by the Secretary; except in cases where a State has a very high percentage of Federally owned lands. In such cases, the "sliding scale" Federal match under section 120(b) of title 23, United States Code, is used. Also retained is the Federal share for operating assistance at 50 percent or less of the net costs of an operating project, as determined by the Secretary. The remainder of the net project costs may be provided from a number of different sources, including amounts appropriated to or made available to a department or agency of the Federal government, other than the Department of Transportation (e.g., Temporary Assistance for Needy Families, Medicaid, job training program funds, or Welfare to Work grants). Using these related human service grants funds as a local match for transit projects leverages the Federal investment and increases coordination among Federal agencies that provide transportation services.

Senate Bill

Sec. 6013.

A new formula tier is established based on land area to address the needs of low-density states. The remaining 80 percent of funds are to be allocated using the current formula. Matching funds may come from contracts with human service agencies (as in current law) or from other Federal programs.

Section 5311(a) defines an eligible recipient and subrecipient of other than urbanized area program funds. Indian tribes are established as direct recipients. Private operators engaged in public transportation are made eligible as subrecipients of 5311 funds, providing for opportunities for involvement of the private sector, as was the original intent when the Urban Mass Transportation Act of 1964 was first enacted.

Recipients must submit data on service levels, costs, and revenues to the National Transit Database. Currently, urbanized area program grant recipients must submit data on service levels, costs, and revenues, in accordance with requirements of the National Transit Database. Current law is amended to require a simplified version of these data collection requirements for the other than urbanized area program. Given the large growth in funding for this program, it is crucial that recipients report basic information on the effectiveness of this program. The Committee expects that the data collection requirements will be tailored to the smaller size of the typical public transportation system in rural areas, while still providing enough information to judge the condition and performance of our Nation's network of rural public transportation services.

The Rural Transit Assistance Program becomes a 2 percent takedown from the program. Under current law, recipients of grants and contracts for transportation research, technical assistance, training, or related support services, such as those given under the Rural Transportation Assistance Program (RTAP), must compete annually for National Planning and Research funds. Section 5311(b)(3), as redesignated, provides up to two percent of Section 5311 funds to carry out RTAP activities. This amendment better correlates funding for RTAP with the amount of funding for rural service overall, thereby stabilizing the program.

Indian tribes become eligible direct recipients of program funds, with a portion of funding set aside for tribes beginning in FY 2006. An increasing amount of funding is set aside for Indian Tribes each fiscal year beginning in fiscal year 2006. Of the remainder, eighty percent of the Section 5311 program amount is apportioned to States pursuant to the same formula currently being used and now set forth in Section 5311(c)(3), which uses population in non-urbanized areas to allocate funds. The remaining twenty percent is apportioned on land area in non-urbanized areas. Section 5311(f)(2) requires the State to consult with affected intercity bus service providers before certifying that the State's intercity bus service needs are being adequately met.

Subsection 5311(g) is amended to allow for a sliding scale approach to the match requirements for capital expenses under this section for those states that have a large percentage of public lands, and as a result, have a lower tax base from which to draw resources. It is similar in nature to a provision already in current law in the highway program. The match for operating assistance is set at 5/8 of the match for capital projects.

Conference Substitute

The conferees agreed to define eligible recipients and subrecipients of Section 5311 funds. Indian tribes are added as eligible recipients.

The general authority to make grants under the 5311 program is rewritten to explicitly include both capital and operating grants; thus, subsection (h) is deleted as unnecessary.

The conferees agreed to fund the rural transportation assistance program (RTAP), a national technical assistance, training and support program for rural public transportation providers, with a 2 percent set-aside of the section 5311 grant funds, rather than from the Research program, as in current law. The conferees adopted the House provision specifying that from the amounts made available for RTAP, up to 15 percent may be used by the Secretary to carry out projects of a national scope to sustain ongoing national activities.

The conference report includes the Senate provision requiring recipients of Section 5311 funds to submit data on service levels, costs, and revenues to the National Transit Database. The conferees expect that the data collection requirements will be tailored to the smaller size of the typical public transportation system in rural areas, while still providing enough information to judge the condition and performance of our Nation's network of rural public transportation services.

The conference report adopts the Senate provision setting aside a portion of funding each year for Indian tribes. The funds set aside for Indian tribes are not meant to replace or reduce funds that Indian tribes receive from states through the Section 5311 program.

A new formula tier based on land area is established to address the needs of low-density states; twenty percent of Section 5311 funds are distributed through this tier. The remaining 80 percent of funds are to be allocated using the existing formula.

The conferees agreed that States must consult with affected intercity bus service providers before certifying to the Secretary that intercity bus service needs of the State are being adequately met without making the 15 percent allocation of funds to such services.

The conferees agreed to apply the sliding scale federal match under section 120(b) of title 23 United States Code, for cases in which a state has a very high percentage of federal lands. The federal match for operating assistance is set at 5/8 of the match for capital projects. The remainder of the net project costs may be provided from a number of different sources, including amounts appropriated to or made available to a department or agency of the Federal government, other than the Department of Transportation (except for Federal Lands Highway funds). The conferees believe that using these related human service grants funds as a local match for transit projects will increase coordination among Federal agencies that provide transportation services.

The conference report adopts the Senate provision codifying current practice by requiring the Secretary of Labor to use a Special Warranty to comply with the requirements of Section 5333(b).

SEC. 3014. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.

House Bill

Sec. 3013.

Currently, section 5312 of title 49, United States Code does not address deployment of emerging technologies, and inappropriately includes training provisions. As amended, section 5312 would authorize research, development, demonstration, and deployment projects, and would move the training provisions in subsections (b) and (c) to section 5322 (Human Resource Program). Under this subsection, the terms “other transactions” is included and is used to replace the terms “other agreements” to provide the Federal government with discretion to enter into project agreements under terms that would encourage private parties to participate in Federally assisted projects.

Senate Bill

Sec. 6014.

Currently, Section 5312 does not address deployment of emerging technologies, and inappropriately includes training. As amended, Section 5312 authorizes public transportation service planning, and research, development, demonstration, and deployment projects.

The former University Research and Fellowships programs authorized by Subsections (b) and (c) are repealed, as these programs have not been funded for many years.

Throughout the Federal Government, the term ‘other transactions’ is used to provide executive branch agencies with broad discretion to enter into project agreements under terms that would encourage private parties to participate in Federally-assisted projects. Since the term ‘other agreements’ in Section 5312(b)(2), as redesignated, provides the same authority, this section is amended to replace that term with ‘other transactions,’ for consistency.

Conference Substitute

Adopts the Senate language, except the term “other transactions” is not adopted. Instead, the broader current law authority for “other agreements” (as utilized under the joint partnership program) is extended to all transit research programs. The current law

authority to make grants for fellowships is moved to section 5322, as proposed by the House.

SEC. 3015. TRANSIT COOPERATIVE RESEARCH PROGRAM.

House Bill

Sec. 3014.

Amendments made to section 5313 of title 49, United States Code provide the correct authorization citation for the research programs and moves subsection (b) to the state planning section under Chapter 52 of title 49.

Senate Bill

Sec. 6015.

The Transit Cooperative Research Program remains unchanged.

Amendments to Section 5313 provide the correct funding authorization citation. Subsection (b) is stricken and the title of Section 5313 is changed to reflect the fact that only the Transit Cooperative Research Program is authorized by this section.

Conference Substitute

The Conference adopts the Senate proposal.

SEC. 3016. NATIONAL RESEARCH AND TECHNOLOGY PROGRAMS.

House Bill

Sec. 3015.

Section 5314 of title 49, United States Code is amended to delete the word “Planning” in the heading because the focus of the section is on research and to include “Technology” in the heading to reflect the activities carried out under this subsection. Other amendments under this subsection correct the funding authorization citations and eliminate references to the planning sections of the title. The Secretary is required to continue to make funds available to help public transportation providers comply with the Americans With Disabilities Act of 1990. Under this section, the term “other transactions” is included to provide the Federal government with discretion to enter into project agreements under terms that encourage private parties to participate in federally assisted projects. The Industry Technical Panel composed of transportation suppliers and others involved in technology development is eliminated because the panel is no longer needed.

Senate Bill

Sec. 6016.

Project Action is continued at current funding levels.

Operational demonstration contracts are allowed under conditions set by the Secretary.

Section 5314(a)(3) is amended to relieve the compliance requirement with Section 5333(b).

Current Section 5314(a)(4)(B) requires FTA to establish an Industry Technical Panel composed of transportation suppliers and others involved in technology development. This provision is deleted.

A new Subsection (a)(6) is added to establish a program of medical transportation demonstration grants. These grants will be focused on improving methods of transportation for persons in need of kidney dialysis.

A new National Technical Assistance Center for Senior Transportation would be established in a new Section 5314(c). Similar to Project Action, the Center would undertake research, provide technical assistance, and make demonstration grants on methods to improve transportation for elderly individuals.

A study is required by Section 5314(d) on how to increase the use of alternative fuels in public transportation.

Conference Substitute

Adopts the House proposal, and changes the term “other transactions” to “other agreements”. The Senate’s medical transportation demonstration grants program, the National Technical Assistance Center for Senior Transportation, and the alternatives fuel study are adopted.

SEC. 3017. NATIONAL TRANSIT INSTITUTE.

House Bill

Sec. 3016.

Section 5315 of title 49, United States Code is amended by striking references to mass transportation because public transportation is defined to mean mass transportation under the transit program.

Senate Bill

Sec. 6017.

The National Transit Institute will be continued at Rutgers University.

Currently, Section 5315(a) requires establishment of the National Transit Institute (NTI) at Rutgers University. This subsection would continue the Institute at this location for the new authorization period. The Committee is concerned about the effectiveness of programs at the NTI and directs the Federal Transit Administration to exercise careful oversight over its operation to assure that the Institute is producing benefits commensurate with the investment being made. The requirement in Section 5315(b) for the Secretary to delegate all authority to NTI to develop and conduct education and training programs is deleted.

Conference Substitute

Adopts the Senate proposal.

SEC. 3018. JOB ACCESS AND REVERSE COMMUTE FORMULA GRANTS.

House Bill

Sec. 3017.

This section codifies under 49 U.S.C. 5316 the Job Access And Reverse Commute (JARC) program authorized under section 3037 of the Transportation Equity Act for the 21st Century. The program was established to assist welfare recipients and low-income individuals in getting to and from jobs.

The program establishes a formula for JARC funds that apportions 60 percent of the funds to designated recipients in urbanized areas with a population of 200,000 or more in a ratio reflecting the number of eligible low-income and welfare recipients in each urbanized area with a population of 200,000 or more; 20 percent of the funds are apportioned among the states in a ratio reflecting the number of eligible low-income and welfare recipients in urbanized areas with populations of less than 200,000 in each state; and 20 percent of the funds are apportioned among states in a ratio reflecting the number of low-income individuals and welfare recipients in other than urbanized areas in each state.

The funds must be used for eligible projects in the designated areas, except funds made available in urbanized areas with populations less than 200,000 and nonurbanized areas may be transferred for projects anywhere in the state if the state has established a statewide program for meeting the objectives of this section and the Governor of the state certifies that all of the objectives of this section are being met in the specific area. The recipient of JARC funds in an urbanized area with a population of 200,000 or more must

conduct a competitive process for an areawide solicitation for applications for grants to the recipients and subrecipients. Statewide solicitations must be conducted in urbanized areas of less than 200,000 and in nonurbanized areas for applications for grants to the recipients and subrecipients. All grants shall be awarded on a competitive basis.

A JARC grant is subject to section 5307 formula grant requirements and a recipient of a grant must certify to the Secretary that allocations of the grant to subrecipients are distributed on a fair and equitable basis. The Federal share for capital projects may not exceed 80 percent of the net capital cost and for operating assistance the Federal share may not exceed 50 percent of the net operating costs. The non-Federal share may be provided from a variety of sources, including other Federal funds (other than from the Department of Transportation). Funds made available through the Social Security Act may also be used for the remainder of the cost of the project.

The Comptroller General is required to conduct a study to evaluate the JARC grant program and transmit the results to the Congress. The study must begin within one year after the enactment of the Federal Transportation Act of 2005, and every two years thereafter. Not later than three years after the date of enactment of this section, the Secretary must conduct a study to evaluate the effectiveness of recipients making grants to subrecipients and transmit the report to Congress.

Senate Bill

Sec. 6038.

The JARC program continues as a competitive discretionary program. The coordination requirements are amended to conform to the changes made in Sections 5307, 5310, and 5311. Section 3037(b)(2) is amended to clarify that funds can be used for the provision of service as well as the development of service.

Section 3037(b) is amended to expand the definition of 'eligible low-income individual' to allow States the flexibility to use JARC funds to assist the same individuals as assisted under the State-administered Temporary Assistance to Needy Families program (TANF).

The Senate requires projects to be drawn from a human service transportation coordination plan. Section 3037(j) is amended to change the terms and conditions of JARC grants to match the type of recipient. Under current law, all JARC grants are subject to the terms and conditions of Section 5307, including those to recipients in other than urbanized areas, or recipients who are private non-profit organizations. This represents a significant burden to these recipients, since the requirements are tailored to public agencies in urbanized areas.

Conference Substitute

Adopts the House proposal, establishing the job access and reverse commute grants program as a formula program, rather than a competitive discretionary grants program. Current law labor protections are retained. The conferees are aware that the Federal Transit Administration has recognized the challenges of providing public transportation services to individuals transitioning from welfare to work, particularly in rural areas. The conferees expect the FTA to continue its practice of providing maximum flexibility to job access projects that are designed to meet the needs of individuals who are not effectively served by public transportation, consistent with the use of funds described in the Federal Register, Volume 67 (April 8, 2002).

SEC. 3019. NEW FREEDOM PROGRAM.

House Bill

Sec. 3018.

This section authorizes a new program requested by the Administration to address the transportation needs of persons with disabilities at all income levels. The New Freedom Program is codified as section 5317 of title 49, United States Code, a section that is repealed under current law. Under the New Freedom Program, the Secretary would make grants to a recipient for new transportation services and public transportation alternatives beyond the Americans With Disabilities Act of 1990 (ADA) to assist individuals with disabilities with transportation needs.

With the passage of the ADA, it has become a civil rights violation to deny access to persons with disabilities to public transportation. The New Freedom formula grant program was proposed by the administration and has been included in this legislation to provide additional tools to overcome existing barriers facing Americans with disabilities seeking integration into the work force and full participation in society. Lack of adequate transportation is a primary barrier to work for people with disabilities. The 2000 Census showed that only 60 percent of people between the ages of 16 and 64 with disabilities are employed. The New Freedom formula grant program will expand the transportation mobility options available to persons with disabilities beyond the requirements of the ADA. Examples of projects and activities that might be funded under the program include, but are not limited to:

- Purchasing vehicles and supporting accessible taxi, ride-sharing, and vanpooling programs.
- Providing paratransit services beyond minimum requirements (3/4 mile to either side of a fixed route), including for routes that run seasonally.
- Making accessibility improvements to transit and intermodal stations not designated as key stations.

- Supporting voucher programs for transportation services offered by human service providers.
- Supporting volunteer driver and aide programs.
- Supporting mobility management and coordination programs among public transportation providers and other human service agencies providing transportation.

A state may use up to 10 percent of the amount it receives under this section to administer, plan, and provide technical assistance. Funds would be apportioned based on a formula that apportions 60 percent of the funds to designated recipients in urbanized areas with a population of 200,000 or more in a ratio reflecting the number of individuals with disabilities in each such urbanized area; 20 percent of the funds are apportioned among the states in a ratio reflecting the number of individuals with disabilities in urbanized areas with a population of less than 200,000; and 20 percent of the funds are apportioned among the states in a ratio reflecting the number of individuals with disabilities in non-urbanized areas in each state.

The Secretary requires a recipient of a grant to coordinate the New Freedom program activities with other related program activities of other Federal agencies. Also a recipient that transfers funds to the urbanized area formula grant program must certify that the project for which funds are requested had been coordinated with nonprofit providers of services. Beginning in fiscal year 2007, a recipient will also be required to certify that projects selected were derived from a locally developed, coordinated public transit-human services transportation plan and that the plan was developed through a process that involved individuals of the public, private, and nonprofit transportation and human services providers.

The Federal share for the net project capital cost of a project may be up to 80 percent, and not more than 50 percent of the net operating cost of a project.

Senate Bill

No Comparable Provision in Senate Bill

Conference Substitute

Adopts the House proposal, establishing a new formula grants program that will provide funds for new transportation services and public transportation alternatives beyond the Americans With Disabilities Act of 1990 (ADA) to assist individuals with disabilities with transportation needs. Section 5333 labor protections are not extended in this new program.

SEC. 3020. BUS TESTING FACILITY.

House Bill

Sec.3019.

This section amends section 5318 of title 49, United States Code, to delete the requirement for the Secretary to establish one bus testing facility because the facility has already been established in Altoona, Pennsylvania. The Secretary is required to maintain the facility. The provisions under section 5318 that establishes a revolving loan fund for expenses related to operating and maintaining the facility are deleted because the bus testing facility relies on state resources to pay for those costs, and has never requested a loan. The provision concerning the acquisition of new bus models is moved to this section from section 5323(c) for clarity.

Senate Bill

Sec. 6018.

Special testing requirements for `New Model' buses are continued.

Technical changes are made in the requirements for the testing of new model buses.

Conference Substitute

Adopts the Senate provision, maintaining the current law funding and requirements of the bus testing facility.

SEC. 3021. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS.

House Bill

Sec.3021.

This section establishes a new program to provide for public transportation in units of the National Park System, to be administered by the Secretary of Transportation in consultation with the Secretary of the Interior. The definition of public transportation for the pilot program means general or special transportation to the public by a conveyance that is publicly or privately owned. The definition does not include school bus or charter transportation, but does include sightseeing transportation. Within 90 days after the enactment of this section, the Secretary of Transportation and the Secretary of the Interior must enter into a memorandum of understanding (MOU) to establish a transit in the parks pilot program to encourage and to promote the development of transportation systems to improve visitor mobility and enjoyment, reduce pollution and congestion, and enhance resource protection through the use of public transportation.

The Secretary of Transportation will administer the pilot program in consultation with the Secretary of the Interior. The MOU entered into between the Secretaries must be consistent with the planning processes required under Chapter 52 of title 49 and include descriptions of programs and activities eligible for assistance under the pilot program. The Secretary of the Interior may carry out eligible transportation projects as permitted under the interagency agreements. The Government's share for any capital project or activity carried out under the pilot program is 100 percent of the net project costs. Operating assistance grants may not exceed 50 percent of the net operating costs of the project.

Senate Bill

Sec. 6040.

This section funds, for the first time, a program to provide funding for public transportation in National Parks and public lands at a level of \$25 million per year. The Departments of Transportation and Interior will work cooperatively to develop and select capital projects.

Under this program, the Departments of Transportation and Interior will work cooperatively to select capital projects for funding within and in the vicinity of sites in the National Park System, the National Wildlife Refuges, Federal recreational areas, and other public lands, including National Forest System lands. This program will help the parks make investments in traditional public transportation, such as shuttle buses or trolleys, or other types of public transportation appropriate to a park setting, such as waterborne transportation or bicycle and pedestrian facilities.

Conference Substitute

The Conference adopts the Senate proposal, with modifications to make National Forest System lands explicitly eligible and to add bicycle and pedestrian projects to the definition of alternative transportation. In addition, language was added to ensure that projects carried out under this program are consistent with other transportation policies of the Department of the Interior and other federal land management agencies. Section 5333 labor protections are not extended in this new program.

SEC. 3022. HUMAN RESOURCES PROGRAMS.

House Bill

Sec. 3022.

Sections 5312(b) and (c) regarding grants to higher learning institutions and fellowships would be moved to sections 5322 (b) and (c) to better fit the organization of the revised section 5312 of title 49, United States Code.

Senate Bill

No Comparable Provision in Senate Bill

Conference Substitute

The Conference adopts House language that allows the Secretary to award fellowship grants.

SEC. 3023. GENERAL PROVISIONS ON ASSISTANCE.

House Bill

Sec. 3023.

Amendments are made to section 5323 of title 49, United States Code in this section.

Subsection 3023(c) regarding conditions on charter bus transportation service amends section 5323(d) by striking the existing law subsection (d)(2) regarding violations of agreements and inserting new language which directs the Secretary to investigate all complaints about violations of the charter service agreement and decide whether a violation has occurred; if a violation has occurred, to correct the violation; and, if a pattern of violations is found, to bar the recipient from receiving funds in an amount the Secretary considers appropriate. Under existing law, the Secretary did not have the flexibility to adjust the amount withheld – the recipient would be barred from receiving further Federal assistance. This overly-broad authority was never used, whereas a more flexible authority to penalize charter violators will encourage a more realistic and responsive approach to charter enforcement by the FTA. The Committee is aware that both public transportation providers and private charter bus providers have expressed strong concerns about the 1987 FTA rule enforcing section 5323(d) regarding charter bus service. The Committee directs the FTA to initiate a rulemaking seeking public comment on the regulations implementing section 5323(d), and to consider certain issues. Consideration of any changes to the current regulation shall not disturb the current law provisions under section 5323(f) regarding school bus transportation.

A new subsection is included that makes revenue bond proceeds eligible for use as local match for federal transit grants and that authorizes recipients to establish debt service reserves using up to 10 percent of their federal grant funds. The authority to use bond proceeds as local match was established in section 3011 of the Transportation Equity Act for the 21st Century (TEA 21), and FTA has reported that this authority has been beneficial to transit operators. This subsection also permits the Secretary to reimburse recipients for deposits in a debt service reserve established for the purpose of financing transit capital projects, pursuant to section 5302(a)(1)(K). Such reimbursements are capped at 10 percent of the recipient's annual apportionment from section 5307 urbanized area formula grants.

Subsection 5323(f) regarding school bus transportation is amended to allow the Federal Transit Administration to assess fines and withhold grant funds if public transportation agencies violate the narrowly defined conditions under which public transportation providers can provide school bus transportation.

Section 5323(j) regarding Buy America is amended by adding a new requirement that FTA provide a detailed written justification when the agency issues a public interest waiver. Additionally, a new provision is added stating that parties adversely affected by FTA action on Buy America decisions may seek judicial review under the Administrative Procedures Act. The general regulatory waivers for Chrysler 15-passenger vans and wagons from the requirement that public transportation vehicles be assembled in the United States are repealed. Section 3023(g)(5) adds a freestanding legislative provision requiring the Secretary to issue a final rule within 180 days of enactment on FTA's implementation of the Buy America requirements. Specifically, the agency is directed to clarify that any waiver issued for microcomputer equipment under the general waiver in subsection (d) of Appendix A of section 661.7 of title 49, Code of Federal Regulations, be applied solely to devices that are used to process or store data, and not extend to products containing a microprocessor, computer, or microcomputer. In directing the Secretary to issue new regulations regarding microprocessors, computers, or microcomputers, there is no intent to change the existing regulatory treatment of software or of microcomputer equipment.

Under current law, section 5323(l) requires state-managed transit grant programs be subject to State transportation planning requirements in section 135 of title 23, United States Code. Since all transportation planning programs are now addressed under chapter 52 of title 49, U.S.C., section 3042 contains a new provision amending section 5323(l) that broadens the applicability of section 1001 of title 18, prohibiting fraudulent statements to the Government, to all certificates, submissions, or statements provided to DOT under Chapter 53 of Title 49. This language is intended to provide a direct tie between 18 U.S.C. 1001 and the punitive recourse of ending financial assistance provided for in the second sentence of new subsection 5323(l). This language is not intended to, and should not be construed to, exclude by implication from the application of 18 U.S.C. 1001 any other matter to which such section would otherwise apply.

Senate Bill

Sec. 6022.

Environmental and public hearing requirements are revised to conform with the applicable cross-cutting statutes.

The provisions of Section 5323(b) are edited to mesh the statutory requirements of Federal transit law more closely with current practice under the National Environmental Policy Act (NEPA).

Section 5323(b) is amended to provide the same consideration to comments submitted by mail or electronic means, as the consideration given to comments transcribed at a hearing. In addition, non-English speaking persons or hearing-impaired persons are provided the opportunity to comment through special arrangements.

This section eliminates the two-step process for announcing a hearing. Under the current process, the applicant announces the opportunity for a hearing and then waits for a response. The Senate requires that a hearing be held whenever the project affects significant social, economic, or environmental interests in the community, regardless of whether one has been requested.

Special terms and conditions for technology deployment projects will be allowed. A new Section 5323(e) allows grants for new technology, including the integration of innovative techniques, subject to the requirements of Section 5309, but only to the extent the Secretary deems appropriate. Revised Subsection (c) strengthens and leverages private sector participation by permitting the Secretary to establish appropriate terms and conditions for projects involving the integration of new innovative or improved products, techniques, or methods.

Section 3011(a) of TEA-21 allows a recipient of an urbanized area formula grant under Section 5307 or a major capital investment grant under Section 5309 to use proceeds from the issuance of revenue bonds as a local match. This provision is codified in Section 5323(f)(1).

Debt Service Reserve Funds are made an eligible project activity. Under Section 5323(f)(2), the Secretary could allow a recipient to use Section 5307 or 5309 dollars to reimburse it for deposits made to the debt service reserve. Because Federal transit funds are typically viewed as higher creditworthy revenues, transit bond ratings would be strengthened and interest costs reduced.

Public transportation agencies can receive land which becomes available as a result of base closures. Subsection (h) is revised to provide for the transfer of lands or interests in lands owned by the United States. The Department of Defense regulations (32 CFR Parts 90 and 91) provide for the disposition of surplus land resulting from the Defense Base Closure and Realignment Act to be transferred free to 'grantees' that have Federal sponsors with Federal land transfer statutes.

Section 5323(m) would be amended to eliminate pre-award and post-delivery audit requirements for private non-profit organizations and grantees serving urbanized areas with fewer than one million people. All manufacturers and suppliers would have to continue to certify compliance with Buy America during the bidding process, and they would remain bound by their original certification. The vast majority of vehicles purchased will still undergo the audits.

Conference Substitute

Adopts the Senate proposal regarding interests in property and notice and public hearings. The current law provision under section 5310 states that public transportation operators are not required to charge elderly individuals and individuals with disabilities a fare is expanded to apply to all programs under this chapter.

Adopts the House proposal regarding conditions on charter bus transportation service. The conferees are aware that both public transportation providers and private charter bus providers have expressed strong concerns about the 1987 FTA rule enforcing section 5323(d) regarding charter bus service. The conferees direct the FTA to initiate a negotiated rulemaking seeking public comment on the regulations implementing section 5323(d), and to consider the issues listed below:

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?
2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?
3. How can the enforcement of violations of the charter bus regulations be improved?
4. How can the charter complaint and administrative appeals process be improved?

Adopts the House proposal regarding the new eligibility to use bond proceeds as local matching funds, including a maintenance of effort clause. New authority for section 5307 funds to be deposited in a debt service reserve is established under a pilot program for 10 eligible recipients, and is established generally for section 5309 funds and a report is directed to be submitted outlining the status and effectiveness of the debt service reserve pilot program.

The House and Senate both carried identical provisions regarding more effective enforcement of schoolbus transportation violations. This language is adopted. The general provisions regarding a 90 percent government share of costs for Americans with Disabilities Act and Clean Air Act related equipment is expanded to incorporate facilities.

Adopts the House language regarding updated Buy America regulations. In the final rule, the FTA is directed to define the term “end product” for purposes of part 661 of title 49, CFR, and to provide that such definition include a list of representative items that are subject to the Buy America requirements, similar to the list of such items under the rolling stock procurements regulations. The purpose of developing such a list and more clearly defining the term end product is to ensure that major system procurements are not used to circumvent the Buy America requirements.

Adopts the Senate language regarding relationship to other laws, which broadens the applicability of section 1001 of title 18, prohibiting fraudulent statements to the Government, to all certificates, submissions, or statements provided to DOT under Chapter 53 of Title 49.

Amends the Senate proposal to waive preaward and postdelivery audits for rolling stock to allow procurements of 20 or fewer vehicles being purchased in rural and small urbanized areas under 200,000 in population to be subject to an expedited postdelivery process that does away with the requirement to have an on-site inspector at manufacturers' facilities.

Adopts the House proposal to allow incidental use of alternative fueling facilities by nontransit users as long as the incidental use does not interfere with the recipient's public transportation operations, and all costs are fully recaptured by the recipient. Revenues under this authority can be used for planning, capital or operating expenses.

SEC. 3024. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.

House Bill

Sec. 3024.

This section makes very minor amendments to section 5324 of title 49, United States Code and changes the title of the section from "Limitations on discretionary and special needs grants and loans" to "Special provisions for capital projects," which is more descriptive of the provisions contained therein regarding relocation program requirements and consideration of economic, social, and environmental interests.

Senate Bill

Sec. 6023.

Environmental and relocation assistance requirements are revised to conform to applicable cross-cutting statutes (NEPA and Uniform Relocation Assistance Act).

Section 5324(a) is amended to reference the relevant sections of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (the Act), 42 U.S.C. 4601 et seq., directly, rather than referencing only two of the numerous conditions contained in the Act.

Section 5324(b) continues to allow protective and hardship acquisitions as defined in 23 CFR 771.117, but it also allows advance acquisition where the strict requirements associated with a protective acquisition are not met. This provision allows for the acquisition when market forces dictate, and thereby avoids multiple transactions on the same property and the associated escalation in cost. A strictly limited number of such

advance acquisitions is allowed without prejudice to the consideration of alternative locations or alternative projects.

Section 5324(c) addresses FTA's current practice of allowing the acquisition of pre-existing railroad right of way (ROW) in advance of any specific project decisions on how the ROW will be used. Any changes in the use of the railroad ROW are subject to appropriate environmental review prior to the change.

Section 5324(d) (formerly Section 5324(b)) meshes the statutory requirements of Federal transit law more closely with current FTA practice under NEPA, and 49 U.S.C. 303 (commonly called `Section 4(f)'), and other environmental laws. Reference to the Secretaries of Agriculture, Health and Human Services, and Housing and Urban Development are removed since these agencies rarely have any interest in transit projects.

The amendment deletes Council on Environmental Quality (CEQ) and substitutes the Administrator of EPA. The Council on Environmental Quality has delegated its routine project review responsibilities to the Environmental Protection Agency (EPA). Section 5324(d) would no longer single out the hearing transcript for greater attention than other valid forms of public comment on a project.

Conference Substitute

The conference report includes a rewritten provision that applies the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to all financial assistance for capital projects under this chapter. Adopts House language regarding consideration of economic, social, and environmental interests. Adopts the Senate proposal to allow acquisition of railroad right-of-way before the completion of environmental reviews, if the acquisition is otherwise permitted under Federal law. A railroad corridor purchased in advance under this authority may not be developed before the project has completed all required environmental reviews.

SEC. 3025. CONTRACT REQUIREMENTS.

House Bill

Sec. 3025.

This section consolidates sections 5325 "Contract Requirements" and 5326 "Special Procurements" of title 49, United States Code, since the provisions of section 5326 fall within the scope of conditions set on contracts that utilize federal funds provided under chapter 53 of title 49, United States Code. Under the revised subsection 5325(a) and (b), recipients of such funds are expressly required to conduct procurements using full and open competition and to use standard architectural, engineering, and design contract award procedures. A new subsection 5325(d) is added that is identical to existing law section 5326(a), except that the term "turnkey" is replaced with the more commonly used term "design-build", and references to design-build "demonstration

projects” are deleted, since design-build contracting has matured beyond the demonstration phase. In addition, design-build contracting does not necessarily result in lower project costs or new technologies and, as a result, this concept as expressed under section 5326(a)(2) in current law is removed.

Senate Bill

Sec. 6024.

Current provisions regarding procurement and contracts are consolidated in a single section.

Grantees must refer to the Contractor Performance Assessment Report when selecting contractors to do work on projects seeking FFGAs.

Competition in all procurements is explicitly established as the presumptive standard. Existing Section 5307 requires the use of competitive procurement as defined or approved by the Secretary in carrying out procurement under that section. Section 5325(a) is amended to expressly require the use of competitive procurement procedures for any procurement carried out under Chapter 53. The revised language in redesignated Section 5325(b)--referred to as `The Brooks Act'--clarifies that program management is limited to architectural, engineering, and design contracts. Also, the reference to 23 U.S.C. 112(b)(2)(C) through (F), which deals with performance and audit standards and indirect cost rates, is removed. Instead, Subsection (b) is revised specifically to include these provisions.

TEA-21 allowed for turnkey system projects, also known as design-build contracting, in Federally funded public transportation projects, including demonstration projects. Section 5325(d) (existing Section 5326(a)), replaces the term `turnkey' with the more commonly used term `design-build.'

Currently, FTA and the Comptroller General can inspect contract records for capital projects receiving Federal transit assistance, but only in cases of `noncompetitive bidding.' New Subsection 5325(g), `Examination of the Records,' strengthens oversight by allowing FTA or the Comptroller General to inspect all contract documents. The `grant prohibition' provision, dealing with contract requirements, was erroneously included under Section 5323, `General Provisions On Assistance,' and is relocated under Section 5325(h).

A new provision is added to Section 5325(i) to strengthen the requirements that contractors to public transportation agencies must have adequate technical and financial capacity to carry out a proposed contract. This elevates already existing FTA and OMB requirements on third-party contracting to a statutory requirement.

Conference Substitute

Adopts the House language regarding architectural, engineering, and design contracts, including the provision that allows State qualifications-based requirements for contracting architectural, engineering, and design services to be employed in lieu of Federal contracting procedures if an equivalent State qualifications-based requirement is established before the date of enactment of the Federal Public Transportation Act of 2005.

Adopts the House proposal regarding design-build projects and the House language regarding multiyear rolling stock. Both the House and Senate bills included a provision stating that no State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter. This provision is adopted. The Senate's language strengthening the requirements that contractors to public transportation agencies have adequate technical and financial capacity to carry out a proposed contract is also adopted.

SEC. 3026. PROJECT MANAGEMENT OVERSIGHT AND REVIEW.

House Bill

Sec. 3026.

This section amends section 5327 of title 49, United States Code regarding project management oversight activities. The Secretary is authorized to use .5 percent of section 5311 funds, .75 percent of section 5307 funds, and 1 percent of section 5309 funds to make contracts for oversight of major transit construction projects, and to review and audit recipients' compliance with federal requirements and provide technical assistance to correct deficiencies identified in such reviews and audits. This is an increase in the amount set aside for such activities above levels set under current law, which provides for .5 percent of section 5307 and section 5311 funds and up to .75 percent for section 5309 funds. Comprehensive agency oversight, compliance review, and technical assistance are necessary for all major grant programs, and particularly important for major capital grants such as new starts and rail modernization.

Senate Bill

Sec. 6025.

The takedown for oversight is increased to 1 percent in all programs.

Given the new security concerns--and in keeping with actual practice in the field--Section 5327(a) is revised to require that a project management oversight (PMO) plan include 'safety and security management.'

The section also provides new authority for the use of oversight funds to conduct analyses which cut across multiple projects. At present, oversight funds may be used only to review each project in isolation. Cross-cutting analyses could help identify major

problems which need attention and could help develop best-practice methods which could be gleaned from a review of a set of similar projects.

Conference Substitute

Adds safety and security to PMO plans. Authorizes the Secretary to use 0.5% of Section 5305 funds, 0.75% of 5307 funds, 1% of 5309 funds, 0.5% of Section 5310 funds, 0.5% of Section 5311 funds, and 0.5% of Section 5320 funds to make contracts for oversight of major transit construction projects, and to review and audit recipients' compliance with federal requirements and provide technical assistance to correct deficiencies identified in such reviews and audits. This is an increase in the amount set aside for such activities above levels set under current law, which provides for .5 percent of section 5307 and section 5311 funds and up to .75 percent for section 5309 funds. Comprehensive agency oversight, compliance review, and technical assistance are necessary for all major grant programs, and particularly important for major capital grants such as new starts and rail modernization.

SEC. 3027. PROJECT REVIEW.

House Bill

No Comparable Provision in House Bill

Senate Bill

Sec. 6026.

The schedules for FTA review of projects in the New Starts process are updated to clarify the relationship to the New Starts process and criteria; the advancement of projects is not automatic, but rather depends on meeting the requirements of that section.

The concept of Programs of Interrelated Projects is not continued.

Conference Substitute

Adopts the Senate proposal, but retains current law provision regarding programs of interrelated projects.

SEC. 3028. INVESTIGATIONS OF SAFETY HAZARDS AND SECURITY RISKS.

House Bill

Sec. 3027.

This section amends section 5329 of title 49, United States Code regarding the Secretary's authority to investigate safety and security risks associated with public transportation equipment, facilities, or operations financed under chapter 53 of title 49, United States Code. The Secretary may withhold any amount of a recipient's Federal assistance until a plan to eliminate, mitigate, or correct the hazard has been approved and carried out.

Senate Bill

Sec. 6027.

FTA investigation authority is expanded expressly to include security issues. Section 5329 authorizes FTA to investigate 'safety hazards,' but does not authorize FTA expressly to investigate 'security' matters. This section is amended to promote active cooperation between FTA and its grantees on security matters, by clarifying that FTA may assist grantees on security matters and investigate security concerns without notice of a specific breach of security at a transit system.

The penalty for failure to address issues is modified. The existing section also contains an 'all or nothing' provision that authorizes the Secretary to withhold 'further financial assistance' upon a transit system's failure to correct a safety hazard. Section 5329 allows the Secretary to determine the amount of funding to be withheld.

A new requirement is added for a Memorandum of Understanding between the Departments of Transportation and Homeland Security specifying the details of how the agencies would cooperate on setting national security standards for public transportation, would establish funding priorities for DHS grants to public transportation agencies, and would coordinate with each other and public transportation agencies on security matters.

Conference Substitute

The conference report adopts a modified version of the Senate provision. In addition to the original Senate security provisions authorizing security and safety investigations and penalties, the conference report requires an annex to the memorandum of understanding signed by the Departments of Transportation and Homeland Security on September 28, 2004 to define and clarify the respective transit security roles and responsibilities of each Department. The conference report also mandates a joint rulemaking outlining the requirements and characteristics of any public transportation security grants, including funding priorities and eligible expenditures.

SEC. 3029. STATE SAFETY OVERSIGHT.

House Bill

Sec. 3028.

This section amends section 5330 of title 49, United States Code by changing the heading from “Withholding amounts for noncompliance with safety requirements” to reflect the more commonly used title of “State safety oversight.” Under this section, a State is required to establish and carry out a safety program plan for rail-based new starts projects. Commuter rail systems that operate on the general railway system are subject to the safety rules and oversight of the Federal Railroad Administration. Amendments to subsection 5330(a) ensure that safety is considered well before a rail-based new start project begins revenue service. In subsection 5330(d), rail-based new start projects that operate in two or more States are required to have a unified safety program plan.

Senate Bill

Sec. 6028.

Safety oversight is required during the design phase of New Starts.

States can designate a single agency to handle oversight of systems serving more than one State.

Section 5330 is amended to change the heading to ‘Withholding Amounts for Non-Compliance with State Safety Oversight Requirements’ the better to reflect the requirements in this section.

Amendments to Section 5330 ensure that safety is considered well before a rail fixed-guideway system begins revenue service, i.e., during the design phase of the project.

Conference Substitute

Adopts the House proposal.

SEC. 3030. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.

House Bill

Sec. 3029.

This section amends section 5331 of title 49, United States Code regarding drug and alcohol testing of public transportation employees, allowing the Secretary to apply a single agency’s drug and alcohol testing regime if a particular transportation provider is subject to more than one agency’s rules. Currently, section 5331 authorizes the Secretary to exclude from FTA drug and alcohol testing those public transportation providers that are adequately covered by the Federal Motor Carrier Safety Administration or the Federal Railroad Administration testing statutes. The amendment to subsection 5331(a) expands the Secretary’s authority to exclude from FTA testing those public transportation

providers that are adequately covered under other Federal or Departmental testing, such as the U.S. Coast Guard's testing provisions applicable to ferryboat employees.

Senate Bill

Sec. 6030.

Section 5331 is amended to expand the Secretary's authority to exclude from FTA testing requirements, those public transportation providers that are adequately covered under other Federal or Departmental testing statutes or regulations, such as the U.S. Coast Guard's testing provisions applicable to ferryboat employees.

Conference Substitute

The Conference adopts the House version.

SEC. 3031. EMPLOYEE PROTECTIVE ARRANGEMENTS.

House Bill

Sec. 3030.

This section amends Section 5333 of title 49, United States Code making conforming changes to ensure that all federal public transportation grant programs are subject to fair labor standards and employee protective arrangements.

Senate Bill

Sec. 6031.

The time for severance pay and benefits for transit workers is reduced to four years to comport with existing rail worker protections for Class III railroads. The Senate notes that this change does not alter requirements for severance pay for workers covered under other laws, such as those governing the rights of railroad workers or the collective bargaining process.

The Senate language harmonizes competitive bidding requirements under Federal law with Federal labor law governing transportation workers. This bill provides that 13(c) requirements do not automatically attach to newly solicited contracts, or require that an identical workforce or identical workplace management rules be maintained under new contracts. Carrying over benefits from contractor to contractor was not envisioned when Section 13(c) was enacted and as such, this restores the original intent of Section 13(c). The bill codifies the Department of Labor's decision (commonly referred to as the 'Las Vegas' decision), which found that a change in contractors would not extinguish obligations under prior Section 5333(b) arrangements. Thus, this provision is not intended to extend, expand, or contract labor protection collective bargaining terms and conditions applicable to subsequent contracts.

Grants for purchase of like-kind equipment or facilities do not have to be referred by the Department of Labor prior to certification. In addition, the Senate language establishes in law a Special Warranty now applied by administrative practice in the Section 5311 program for other-than-urbanized-areas and applies it in the Job Access and Reverse Commute Program.

Sec. 6031.

Conference Substitute

The conference report adopts the Senate proposal to establish in law a special warranty for Section 5311 programs.

In addition, the conference report adopts the Senate proposal regarding like kind grants with a modification to limit the provision to certify without referral to situations that do not materially revise or amend an existing assistance agreement.

The Senate bill included changes to 49 USC 5333(b) regarding rights afforded to employees under this section when one private contractor replaces its predecessor as a result of competitive bidding. The Conferees agree that the so-called contractor-to-contractor issues were addressed in the Department of Labor's *Las Vegas* decision dated September 21, 1994, as clarified by the supplemental ruling dated November 7, 1994. The Conferees expect that when the Department of Labor (DOL) is called upon to resolve such issues in similar bus transit situations, the agency shall apply the principles, as applied to the facts, set forth in the Department's *Las Vegas* rulings, without otherwise affecting existing protective arrangements. This affirmation of existing DOL policy shall not serve as a basis for objections under 29 CFR 215.3(d).

Finally, Section 5333(b) is not applied to the new programs created in conference report, Section 5317 (New Freedom) and Section 5320 (Alternative Transportation in Parks and Public Lands) programs.

SEC. 3032. ADMINISTRATIVE PROCEDURES.

House Bill

Sec. 3031.

This section amends section 5334 of title 49, United States Code regarding the Secretary of Transportation and Federal Transit Administration's authority to administer programs carried out under chapter 53 of title 49, United States Code. The Secretary is prohibited from regulating public transportation provider's routes, schedules, and rates, except in the case of a national or regional emergency. A new subsection 5334(c)(5) has been added that requires the FTA to subject non-regulatory substantive policy statements

to a 60-day public review notice and comment period. Currently, FTA circulars, letters, or other policy statements can be issued without the benefit of the same public review and comment process that is required under the regulatory process. However, such documents often carry the same weight and penalties as regulations. An example of this “unwritten rule” is the \$500 million per project limitation FTA has placed on the Federal commitment on a full funding grant agreement issued under the authority of section 5309. Although such a project cost limitation might be a valid policy, it has not been published in a form that allows for comment from the affected transit community. The provision added in subsection (c)(5) will add transparency to FTA’s administrative procedures and provide opportunity for public review and feedback.

Senate Bill

Sec. 6032.

Amends Section 5334(a) to clarify that FTA has explicit authority to issue regulations.

Current Section 5324(c), ‘Prohibitions Against Regulating Operations and Charges,’ is moved to Section 5334, ‘Administrative Provisions,’ as a new Subsection (b). It is appropriate to house this prohibition in the ‘Administrative Provisions’ section and make it expressly applicable chapter-wide, rather than on capital projects only. While it has been the practice of FTA to forego any regulation of operations or charges with respect to any grant based on legislative history, current law is ambiguous. Moving this provision will clarify that FTA may not regulate operations or charges, except in emergencies. The appropriate Federal role in public transportation is to provide financial assistance only, and not to regulate operations. Also, this provision is amended to specify that the Secretary is prohibited from regulating a recipient’s routes, schedules, rates, fares, tolls, and rentals, just as this provision had specified prior to the recodification of the Federal Transit Act into 49 U.S.C. Chapter 53 in 1994. In light of the September 11 terrorist attacks, this provision is further amended to allow the Secretary of Transportation, under direction by the President, to regulate the operation of and charges for public transportation systems for purposes of national defense or in the event of a national or regional emergency.

Conference Substitute

Adopts the House proposal. The provision regarding nonregulatory substantive policy statements is amended to apply more narrowly to agency statements that impose a binding obligation on recipients of Federal assistance under this chapter. Such statements shall be subject to rulemaking procedures under the Administrative Procedure Act.

SEC. 3033. NATIONAL TRANSIT DATABASE.

House Bill

Sec. 3032.

This section amends Section 5335 of title 49, United States Code by striking subsection (b) regarding a transferability report that was completed in 1993. The section header is amended from the current law title “Reports and audits” to “National transit database” to reflect the revised contents of the section.

Senate Bill

Sec. 6033.

Section 5335(b), requiring that the Comptroller General submit ‘transferability reports’ to Congress, is removed, as the report is no longer needed on a recurring basis. Information on the use of flexible funding under Title 23 is readily available.

Conference Substitute

Adopts the Senate provision. Beginning in 2006, the national transit database will be funded as a takedown from the formula grants programs at \$3,500,000 a year.

SEC. 3034. APPORTIONMENTS OF FORMULA GRANTS.

House Bill

Sec. 3040.

This section establishes a new set-aside program from the section 5307 urbanized area formula grants that provides a small bonus grant payment to urbanized areas under 200,000 in population that operate at a level of service above the industry average level of service in similarly-sized urbanized areas in one or more of six performance categories: passenger miles traveled per vehicle revenue mile, passenger miles traveled per vehicle revenue hour, vehicle revenue miles per capita, vehicle revenue hours per capita, passenger miles traveled per capita, and passengers per capita. These performance categories and a methodology established for providing bonus grants were established in the September 2000 FTA report to Congress called “The Urbanized Area Formula Program and the Needs of Small Transit Intensive Cities.”

Senate Bill

Sec. 6034

For basic apportionments, the existing urbanized area formula continues as in current law.

The ‘Transit Intensive Cities’ tier would allocate funds to small urbanized areas with transit service levels (represented by revenue vehicle hours) per capita greater than

the per capita service levels in areas with population of 200,000 to 1,000,000 on the basis of transit service levels. Funds from this tier are available for capital purposes only.

A provision is added to require a study of incentives which might be added to the urbanized area and other-than-urbanized area formula programs. In light of numerous questions about how such a program as proposed by the Administration would work, the factors to be considered, and the manner in which grants could be used, the Senate instead calls for a study of the issues involved in establishing such a program. The report should address the possibility of rewarding improvements in ridership (as was proposed by the Administration) as well as improvements in efficiency (cost per unit of service provided), effectiveness (service utilization per unit of service provided), and cost-effectiveness (cost per unit of service utilization).

Conference Substitute

Adopts the House version of the “Small Transit Intensive Cities” formula program, with annual funding at one percent of the total amount made available for formula programs. Adopts the Senate’s incentives in formula programs study and provides that 60 percent of the directional route mileage of the Alaska Railroad system be attributable to that system.

SEC. 3035. APPORTIONMENTS BASED ON FIXED GUIDEWAY FACTORS

House Bill

Sec. 3033.

This section amends Section 5337 of title 49, United States Code regarding apportionment formulas for the fixed guideway modernization program. The provision regarding route segments to be included in the apportionment formula is amended to delete the “1997 Standard” that held eligible rail system mileage to the number of miles a system reported in fiscal year 1997.

Senate Bill

No similar provision.

Conference Substitute

Does not adopt the House elimination of the 1997 Standard. Makes an adjustment to a small urbanized area with a fixed guideway system to treat the system as a large urbanized area for purposes of apportionments based on fixed guideway factors.

SEC. 3036. AUTHORIZATIONS.

House Bill

Sec. 3034.

This section amends Section 5338 of title 49, United States Code, making FTA program funds available on an annual basis for the fiscal year 2004-2009 authorization period. The major FTA programs are Formula Grants, Capital Investment Grants, Planning, Research, and Administrative Expenses. A new organizational structure is adopted to separate the fiscal year 2004 funding, which splits every account's funding between the Mass Transit Account and the general fund at an 80:20 ratio (current law structure), from funding for fiscal years 2005-2009, which is either 100 percent trust funded or 100 percent general funded. The programs that will be 100 percent trust funded in fiscal years 2005-2009 are Formula Grants and Planning, as well as the bus and bus related facilities grants and the fixed guideway modernization grants under Capital Investment Grants. The programs that will be 100 percent general funded in fiscal years 2005-2009 are Research, Administration, and the new starts and small starts programs under Capital Investment Grants. This restructuring of the program financing will prevent an accounting problem with the spending rate of the Mass Transit Account. By not split-funding any programs, each program will outlay at its actual spending rate.

The Formula Grants programs comprise 54 percent of the total transit programs. There are a number of allocations made from the total formula grants funding for: new bus model testing, grants to the Alaska Railroad, over-the-road bus accessibility equipment costs, the new Transit in the Parks pilot program, the transit portion of funding for the non-motorized transportation pilot program authorized in section 1121(b) of the bill, the New Freedom program, the Job Access and Reverse Commute grant program, and the Clean Fuels grant program. After these allocations of funds have been made, the remainder of the aggregate amount is allocated in the following percentages: 2.5 percent to the elderly and disabled formula grant program, 8 percent to the nonurbanized formula grant program, and 89.5 percent to the urbanized area formula grant program. The percentage shares for the elderly and disabled program grants and for the nonurbanized formula grants have been increased over such shares under current law.

The Capital Investment Grants programs comprise 43 percent of the total transit programs. The four Capital Investment Grant programs (fixed guideway modernization, new starts, small starts, and bus and bus-related facilities) receive funding allocations under section 5309(m).

Planning grant fund apportionments to metropolitan areas and states are provided under subsection 5338(c). For fiscal year 2004, the funding is split-funded and for fiscal years 2005-2009, the funding is derived from the Mass Transit Account. The percentage of planning funds allocated to metropolitan areas is 82.72 percent and 17.28 percent is apportioned to states for state planning activities, the same percentages as provided under current law.

The Research program is funded under subsection 5338(d). For fiscal year 2004, the funding is split-funded, and for fiscal years 2005-2009, the funding is authorized to be appropriated from the general fund. There are a number of allocations made from the total formula grants funding for: the transit cooperative research program, management of the national transit database, the National Transit Institute transit training facility at Rutgers University, and Project Action, a national technical assistance program for providers of transportation services to the disabled. The remainder of funds under this subsection are available for the national research and technology programs. In subsection 5338(e), funding is authorized for university transportation research. This complements funding made available for these programs under the Federal-aid Highway program in Title V of the bill.

Funding for administration of the Federal transit programs is provided under subsection 5338(f). For fiscal year 2004, the funding is split-funded, and for fiscal years 2005-2009, the funding is authorized to be appropriated from the general fund.

Senate Bill

Sec. 6036.

Section 5338 authorizes amounts from the General Fund, and makes available amounts from the Mass Transit Account of the Highway Trust Fund, to carry out Federal public transportation programs in Fiscal Years 2005 through 2009. Funds from the Mass Transit Account are provided as 'contract authority.'

Section 5338(a), provides funds for all programs for Fiscal Year 2005 in accordance with the Consolidated Appropriations Act.

Section 5338(b) Formula Grants and Research, provides funds for Fiscal Years 2006 through 2009 from the Mass Transit Account to carry out Sections 5305, 5307, 5308, 5309 (bus and fixed-guideway modernization), 5310-5318, 5322, 5335 and 5505 of Title 49, and Sections 3037 and 3038 of Pub. L. 105-178. It also provides for a takedown for grants to the Alaska Railroad for improvements to its passenger operations under Section 5307.

Section 5338(c), Major Capital Investment Program Grants, authorizes appropriations from the General Fund in Fiscal Years 2006 through 2009 to carry out Section 5309 (New Starts). Section 5338(c) authorizes funds from the Trust Fund for administrative expenses. Amounts available under Subsections (a) and (b) remain available until expended and grants financed from amounts derived from the Mass Transit Account or through advance appropriations under those subsections would be contract authority.

Grants for both planning programs are mainstreamed into 49 U.S.C. 5308. Funding for the planning programs are authorized as a takedown from the Urbanized Area Public Transportation Formula Grants account.

The bill provides that 1.75 percent of the funds are available for planning in Fiscal Years 2006 through 2009. This percentage represents a minimal increase over previous Fiscal Years. The amount proposed in fiscal year 2005 takes into account that this fiscal year will be the first year of reauthorization and is based on the Consolidated Appropriations Act.

The bill provides funding for the National Transit Database (NTD) authorized under Section 5335 in fiscal years 2006 through 2009. The NTD workload has increased substantially with the advent of monthly reporting on safety and security and with the new requirements for the phased in rural and asset condition reporting.

Conference Substitute

Section 5338 authorizes amounts from the General Fund, and makes available amounts from the Mass Transit Account of the Highway Trust Fund, to carry out Federal public transportation programs in Fiscal Years 2005 through 2009. Funds from the Mass Transit Account are provided as 'contract authority.'

Section 5338(a) provides funds for all programs for Fiscal Year 2005 in accordance with the Consolidated Appropriations Act.

Section 5338(b), Formula and Bus Grants, provides funds for Fiscal Years 2006 through 2009 from the Mass Transit Account to carry out all programs except New Starts, Research (including University Transportation Centers), and FTA Administration. Amounts are specified for each program for each fiscal year.

The bill provides funding from the Trust Fund in Section 5338(b) for the National Transit Database (NTD) authorized under Section 5335 in fiscal years 2006 through 2009. The NTD workload has increased substantially with the advent of monthly reporting on safety and security and with the new requirements for the phased in rural and asset condition reporting.

Grants for both planning programs are mainstreamed into 49 U.S.C. 5305. Funding for the planning programs are authorized as specified amounts from the Formula Grants account.

Section 5338(c), Major Capital Investment Grants, authorizes appropriations from the General Fund in Fiscal Years 2006 through 2009 to carry out New Starts, including Small Starts, under Section 5309.

Section 5338(d), Research and University Research Centers, authorizes appropriations for the Research Programs, including University Transportation Centers. Specific amounts are provided for the Transit Cooperative Research Program, as well as Project Action and the new Center for Senior Transportation.

Section 5338(e), Administration, authorizes appropriations for administrative expenses.

Amounts available under Subsections (a), (b), (c), and (d) remain available until expended. Grants financed from amounts derived from the Mass Transit Account under subsections (a) or (b) or through advance appropriations under those subsections as well as subsections (c), (d), or (e) would be contract authority.

SEC. 3037. ALTERNATIVES ANALYSIS GRANTS.

House Bill

No provision.

Senate Bill

No provision.

Conference Substitute

Establishes a new program explicitly for grants to States, metropolitan planning organizations, and local governmental authorities to develop alternatives analyses. This eligibility for new fixed guideway capital project planning and alternatives analysis resides under section 5309 in current law. Because the conferees have eliminated this eligibility under the New Starts program, a stand-alone program is established for such activities.

SEC. 3038. APPORTIONMENTS BASED ON GROWING STATES FORMULA FACTORS.

House Bill

No Comparable Provision in House Bill

Senate Bill

Sec. 6037.

A new Section 5340 is added to allocate funds to Growing and High Density states. For this section, the term 'State' is defined only to mean the 50 States.

The new Section 5340 allocates funds based on the population forecasts for fifteen years after the date of that census. Forecasts are based on the trend between the most recent decennial census and Census Bureau population estimates for the most current year. Funds allocated to the States are then sub-allocated to urbanized and non-urbanized areas based on forecast population, where available. If forecasted population data at the urbanized level is not available, funds are allocated to current urbanized and non-urbanized areas on the basis of current population. Funds allocated to urbanized areas are included in their Section 5307 apportionment. Funds allocated for non-urbanized areas are included in the states' Section 5311 apportionments.

For States with population densities in excess of 370 persons per square mile, funds are allocated based on the amount by which their population exceeds the product of

their land area and the percentage of total State population in urbanized areas as determined by the most recent Decennial Census.

Conference Substitute

The Conference adopts Senate Proposal with a modification to flow high density funds through urbanized areas. These funds will be distributed to urbanized areas in their Section 5307 apportionments on the basis of their share of urbanized population. The Conferees expect that FTA will publish single urbanized and rural apportionments that show the total amount for 5307 and 5311 programs that includes both apportionments under 5336 and 5311 formulas together with 5340.

SEC. 3039. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.

House Bill

Sec. 3035.

This section amends Section 3038 of TEA 21 regarding the over-the-road bus accessibility program, which provides grants to intercity and charter bus providers for incremental costs of equipment to reach compliance with the Americans with Disabilities Act. The TEA 21 provision regarding Federal share is amended by increasing the Federal share for such project costs from 50 percent to 80 percent.

Senate Bill

Sec. 6039.

Continues Over-the-Road Bus Accessibility Program.

Conference Substitute

Adopts the House proposal but specifies that the Federal share for grants under this program is 90 percent.

SEC. 3040. OBLIGATION CEILING.

House Bill

Sec. 3045

This section sets the annual obligation ceiling for Federal Transit Administration programs authorized by this Act for fiscal years 2004-2009, including both amounts made available from the Mass Transit Account of the Highway Trust Fund and general funds from the U.S. Treasury. The total obligation authority for each fiscal year is

guaranteed to be provided in the fiscal year for which it is set under the budgetary firewalls established in section VIII of the bill.

Senate Bill

Sec. 6041.

This section establishes the obligation ceiling for each fiscal year, equal to the total amounts authorized.

Conference Substitute

Establishes the obligation ceiling for fiscal years 2006 through 2009, and sets a ceiling on the amount that can be made available from the Mass Transit Account.

SEC. 3041. ADJUSTMENTS FOR FISCAL YEAR 2005.

House Bill

Sec. 3046

This section provides for the funding reconciliation of apportionments and allocations made to transit grant recipients under this Act with the levels of funding already made available under the Surface Transportation Extension Act.

Senate Bill

Sec. 6042.

This section provides that the amounts for Fiscal Year 2005 are in lieu of, and not in addition to, the amounts authorized for the first eight months of Fiscal Year 2005 by the Surface Transportation Extension Act of 2004. In addition, the section provides for an adjustment to the calculations of apportionments for the fixed-guideway modernization program, since that formula assumes a full year of funding.

Conference Substitute

The conference report reconciles apportionments and allocations made under this Act with the funding already made available under the Surface Transportation Extension Act. This section also contains an adjustment to the calculation of apportionments for the fixed guideway modernization program.

SEC. 3042. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST PUBLIC TRANSPORTATION SYSTEMS.

House Bill

No Comparable Provision in House Bill

Senate Bill

Sec. 6029.

The term 'mass transportation' is changed to 'public transportation' throughout Chapter 53 of Title 49, U.S.C. Section 1993 of Title 18 is amended to replace the term 'mass transportation' with 'public transportation.'

Section 1993(a)(5) makes it a Federal crime to interfere with anyone 'dispatching, operating, or maintaining a mass transportation vehicle or ferry.' The statute does not address those who 'control' such vehicles, and arguably excludes rail system 'controllers' (central command employees who control the movement of rail cars). Although such controllers 'operate' vehicles in some cases, and thus may fall within the statute, the statute does not expressly cover them. The amendment to Section 1993(a)(5) explicitly provides that interference with a rail controller constitutes a Federal crime.

Conference Substitute

The Conference adopts the Senate proposal.

SEC. 3043. PROJECT AUTHORIZATIONS FOR NEW FIXED GUIDEWAY CAPITAL PROJECTS.

House Bill

Sec. 3037.

This section lists the projects that are authorized under the section 5309 new starts and small starts programs for fiscal years 2004-2009. Existing full funding grant agreements are listed separately from projects authorized for final design and construction and those authorized for alternatives analysis and preliminary engineering.

In subsection 3037(a), 26 new start projects originally authorized in the Intermodal Surface Transportation Efficiency Act (ISTEA) or in TEA 21 have continued authorizations with the amount specified by fiscal year that remains outstanding under the schedule of federal funds for the project (or "schedule 6") attached to each project's full funding grant agreement contract with the FTA. The first responsibility of the Appropriations Committees in providing funds for new fixed guideway capital projects must be to ensure that each project under a full funding grant agreement receives the full amount specified for the fiscal year in which it is programmed. Under-funding full funding grant agreements is very damaging to the financial management of the project and to the overall capital and operating budget of the sponsoring agency, and may jeopardize private financing for the local share of such project costs.

In subsection 3037(b), new fixed guideway capital projects that are ongoing projects in the new starts pipeline and are currently in preliminary engineering or final design are authorized for final design and construction.

In subsection 3037(c), new fixed guideway capital projects that have not yet been approved for preliminary engineering by the FTA or that were not previously authorized under TEA 21 are authorized for alternatives analysis and preliminary engineering.

Subsection 3038(d) sets out rules relating to new starts and small starts funding for the life of the authorization. In general, all projects that are authorized under subsection (a) may expend Federal funds only for final design and construction activities. Projects that are authorized under subsection (b) may expend Federal funds for final design and construction, and for alternatives analysis and preliminary engineering activities. Projects that are authorized under subsection (c) may expend Federal funds only on alternatives analysis and preliminary engineering activities. However, on October 1, 2007, projects authorized under subsection (c) shall also be authorized for final design and construction. Minimum funding levels are established for appropriations for each fiscal year in the full funding grant agreement category (subsection a) and the final design and construction category (subsection b), and maximum funding levels are established for each fiscal year in the alternatives analysis and preliminary engineering category (subsection c). Subsection 3037(b) projects authorized for final design and construction that execute a full funding grant agreement with FTA after the date of enactment of this Act are to be given the full amount indicated in the schedule of federal funds for the project for each fiscal year under the agreement.

Subsection 3037(e) amends the project description for the New Jersey Urban Core project originally authorized in section 3031(d) of ISTEA. This authorization was expanded in TEA 21 and is further amended in this legislation.

Subsection 3037(f) directs that project elements of the New Jersey Trans-Hudson Midtown Corridor that have been advanced with 100 percent non-Federal funds shall be given consideration by the FTA when evaluating the local share of the project in the new starts rating process, including the purchase of bi-level rail equipment.

Senate Bill

No Comparable Provision in Senate Bill

Conference Substitute

The House proposal is adopted. In subsection (d), the Senate includes authorizations for new fixed guideway projects with funding amounts, subject to the requirements of section 5309(d) and (e) of title 49, U.S.C.

Bi-County Transitway. – It is the intent of the managers that any alignment of the Bi-County Transitway along the Georgetown Branch right of way should be designed and constructed in a manner to ensure a safe and accessible pedestrian-bicycle trail. The Maryland Transit Administration should consider a range of options to include placing the rail line underground through cut and cover.

SEC. 3044. PROJECTS FOR BUS AND BUS-RELATED FACILITIES AND CLEAN FUELS GRANT PROGRAM.

House Bill

Sec. 3038.

This section lists bus and bus facilities projects and associated funding levels for fiscal years 2006, 2007, and 2008. Each year's designated funding represents one half of the authorized amount for section 5309 bus and bus facility projects for that fiscal year.

Senate Bill

No Comparable Provision in Senate Bill

Conference Substitute

This section lists bus and bus facilities projects and associated funding levels for fiscal years 2006, 2007, 2008, and 2009. Both the House and Senate combined amount of funding for each fiscal year represents one half of the authorized amount for section 5309 bus and bus facility projects for that fiscal year.

SEC. 3045. NATIONAL FUEL CELL BUS TECHNOLOGY DEVELOPMENT PROGRAM.

House Bill

Sec. 3039.

This section authorizes a new fuel cell bus technology development program for hydrogen fuel cell and liquid methanol fuel cell bus technologies, in order to facilitate the development of commercially viable fuel cell bus technology and related infrastructure. The program is limited to three recipients, at a Federal share of 50 percent.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

Adopts the House proposal.

SEC. 3046. ALLOCATIONS FOR NATIONAL RESEARCH AND TECHNOLOGY PROGRAMS.

House Bill

Sec. 3041.

This section establishes seven specific research areas within the Federal Transit Administration's national research and technology program, and allocates funding levels in each fiscal year of the authorization period for these research areas. These research focus areas were developed through conferring with the FTA and reflecting priorities established in the agency's Research and Technology Strategic Plan. The programmatic structure and funding floors for each research area will help ensure that adequate funding is provided throughout the authorization period to establish and carry out meaningful programs with depth and continuity.

Senate Bill

No Comparable Provision in Senate Bill

Conference Substitute

The conference report does not break out specific research areas within the national research and technology program. Program designations are made for several national research projects and University Transportation Centers.

SEC. 3047. FORGIVENESS OF GRANT AGREEMENT.

House Bill

Sec. 3043.

Forgives certain debts of the Lane County Transit District.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

Forgives certain debts of the Lane County Transit District and the Pee Dee Regional Transit Authority.

SEC. 3048. COOPERATIVE PROCUREMENT.

House Bill

Sec. 3044

This section directs the Secretary to review the practice of cooperative procurement of transit rolling stock, such as buses and rail cars. A pilot program is currently underway at the Federal Transit Administration to determine the benefits of encouraging cooperative procurement of major capital equipment. The program consists of three competitively selected grantees, consortiums of grantees, or members of the private sector acting as agents of grantees, who will develop cooperative specifications and conduct joint procurements. For this program, the Federal share was increased from 80 percent to 90 percent. The Secretary is also directed to consider information gathered from grantees about cooperative procurement, whether or not related to the pilot program. The Secretary is directed to notify the Committee on Transportation and Infrastructure and the Senate Committee on Banking, Housing, and Urban Affairs of the results of the cooperative procurement review, and make a finding of whether this program has sufficient merit to be formally incorporated in the Federal public transportation program.

Senate Bill

No Comparable Provision in Senate bill.

Conference Substitute

Adopts the House proposal.

SEC. 3049. TRANSIT PASS TRANSPORTATION FRINGE BENEFITS.

House Bill

No Comparable Provision in House Bill

Senate Bill

Sec. 6044.

The Senate bill includes two provisions related to transportation fringe benefits. Section 6004(a) requires the Secretary of Transportation to conduct a study of tax-free transit benefits and ways to promote improved access to and increased usage of such benefits at Federal agencies in the National Capital Region (NCR). Executive Order #13150 requires such benefits to be offered at executive agencies in the NCR, and the study is designed to determine how agencies are implementing that requirement and what the impact has been on congestion and pollution in the NCR.

Section 6004(b) would remove the restriction that prohibits a federal agency from operating a shuttle service to a transit facility. By improving access to commuting alternatives, federal agencies will be able to provide a benefit to their employees that will also help to reduce congestion and improve air quality across the nation.

Conference Substitute

The conferees replaced the transit benefit study from the Senate bill with language codifying Executive Order # 13150 and extending it to include the legislative and judicial branches and independent agencies. As a result, all qualified federal employees in the National Capital Region will receive tax-free transit benefit to cover their commuting costs up to the maximum allowed by law.

The conferees adopted the Senate provision regarding shuttle service with modifications. The language was clarified to make clear that the decision to provide shuttle service rests with the agency head. In addition, language was added to specify that an employee riding in a shuttle would not be considered to be within the scope of his or her office simply by virtue of the fact that the employee was using the shuttle service. Finally, language was added to make clear that time during which an individual uses the shuttle service should not be considered when calculating the hours of work or employment for that individual for purposes of title 5 of the U.S. Code, including chapter 55 of that title. However, the conferees do not intend for this language or an employee's use of the shuttle service to be the basis for any disciplinary action.

SEC. 3050. COMMUTER RAIL.

House Bill

No Comparable Provision in House Bill

Senate Bill

Sec. 6046.

The Senate provision is intended to ensure timely completion of Rhode Island's commuter rail projects, which were authorized in TEA-21. Owing to the fact that commuter rail in Rhode Island is carried on Amtrak owned track, progress on completion of 2 new commuter stations requires Amtrak consent. The Senate bill ensures that the Secretary of Transportation has the authority to ensure that the projects authorized under Section 3030(c) (1)(A)(xliv) of the Federal Transit Act of 1998 and section 1214(g) of the Transportation Equity Act for the 21st Century (16 U.S.C. 668dd note) are successfully completed.

Conference Substitute

The Conference adopts the Senate proposal.

SEC. 3051. PARATRANSIT SERVICE IN ILLINOIS

House Bill

No comparable provision in House bill.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

This provision clarifies the authority of a regional or State agency in the State of Illinois to provide coordinated paratransit services and for the Federal Transit Administration to hold such provider accountable under the requirements of the Americans with Disabilities Act. In May 2005, the Illinois General Assembly passed legislation that will consolidate in one agency the paratransit services in the six-county Chicagoland region. Because FTA regulations do not contemplate that regional agencies would directly provide coordinated services in the manner set forth in this new State law, this provision sets forth explicit authority for FTA to audit the services provided by a regional or State agency, make recommendations, and take enforcement action if necessary against that agency.